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THE  
ANNOTATED CORPORATION LAWS  
OF  
ALL THE STATES

GENERALLY APPLICABLE TO STOCK CORPORATIONS

INCLUDING

Statutes and Constitutional Provisions relating to Receivers, Practice,  
Taxation, Trusts and Combinations, Labor, and Crimes  
by Corporations and their Officers.

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IN THREE VOLUMES.

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COMPILED AND EDITED BY

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OF THE ALBANY, N. Y., BAR.

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# MASSACHUSETTS.

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## LEGISLATIVE ACTS AND RESOLVES RELATING TO CORPORATIONS, PASSED SUBSEQUENTLY TO 1882.





# MASSACHUSETTS.

## THE PUBLIC STATUTES OF MASSACHUSETTS—1882.

### Part I. Of the Internal Administration of the Government.

- Tit. I. Of the jurisdiction of the commonwealth, etc.  
III. Of the assessment and collection of taxes.  
XII. Of the regulation of trade in certain cases.  
XIII. Of the prevention of frauds and perjuries.  
XIV. Of the internal police of the commonwealth.  
XV. Of corporations.

### TITLE I. OF THE JURISDICTION OF THE COMMONWEALTH, THE GENERAL COURT, ETC.

#### CHAPTER II.

##### Of the General Court.

- Sec. 5. Notice of petitions affecting individuals or private corporations.  
7. Notice of petitions for acts of incorporation.  
8. Matters to be specified in notices.

§ 5. Whoever intends to present to the general court a petition affecting the rights and interests of \* \* \* private corporations shall give notice of such intention by publishing a copy of the petition four weeks successively in some newspaper published in the counties in which \* \* \* such corporations are established, the last of said publications to be at least fourteen days before the session at which the petition is to be presented. Such newspaper shall be designated by the petitioner and approved by the secretary of the commonwealth.

See ch. 106, § 5; ch. 186, § 17.

§ 7. Whoever intends to present a petition for an act of incorporation, or for an alteration or extension of the charter of a corporation, shall give notice of such intention by an advertisement, at least four weeks immediately preceding the session at which the petition is to be presented, in some newspaper printed in the county where such corporation is, or is intended to be, established. Such newspaper shall be designated and approved as provided in section five.

See ch. 105, § 3.

[The charter of a private corporation is inoperative until accepted; and if several persons are incorporated, the charter does not bind one who has not assented. And an amendment to a charter must be accepted. *Ellis v. Marshall*, 2 Mass. 263; *Riddle v. Merrimack Proprs.*, 7 id. 169; *Bridge v. Bridge*, (7 P.) 24 id. 344; *Ins. Co. v. Hobart*, (2 G.) 68 id. 543; *Collegiate Inst. v. French*, 82 id. 196.

If a charter includes those who afterward associate, one who subscribes the articles after the incorporation becomes a member thereby, although he has not received a certificate. *Glass Co. v. Dewey*, 16 Mass. 94. Aliter, where the statute does not include those thereafter becoming members. *Bank v. Boynton*, (11 C.) 65 Mass. 369.

A formal acceptance is not necessary; acts of acceptance will suffice. *Bridge v. Bridge*, (7 P.) 24 Mass. 344; *Russell v. McLellan*, (14 P.) 31 id. 63; *R. R. v. Chandler*, (13 Met.) 54 id. 311; *Trustees v. Gibbs*, (2 C.) 56 id. 39. As to cases where an acceptance by the directors will suffice, see *R. R. v. R. R.*, 111 Mass. 125. Long acquiescence raises a presumption of acceptance. *Cobb v. Klingman*, 15 Mass. 197.

A legislative grant by a collective name, of powers which cannot be exercised except in a corporate capacity, is an implied grant of corporate powers *pro tanto*. *Stebbins v. Jennings*, (10 P.) 27 Mass. 172.]

§ 8. The notice of a petition for an act of incorporation shall specify the amount of capital stock required; the notice of a petition for the alteration or extension of a charter shall specify the alteration or extension intended to be asked for; and the notice of a petition for a charter of a street railway company shall designate the intended route with such certainty as to give information to all persons to be affected thereby.

See § 7, ante.

### TITLE III. OF THE ASSESSMENT AND COLLECTION OF TAXES.

- Ch. 11. Of the assessment of taxes.  
12. Of the collection of taxes.  
13. Of the taxation of corporations.

#### CHAPTER XI.

##### Of the Assessment of Taxes.

- Sec. 4. Purposes for which shares of stock may be taxed.  
28. Fraudulent transfers of stock to avoid taxation; penalty.

§ 4. (As amended April 26, 1887.) \* \* \* No taxes shall be assessed in any city or town for State, county or town purposes upon the shares in the capital stock of any corporation organized or chartered in the commonwealth paying a tax on its corporate franchises under the provisions of chapter thirteen for any year in which it pays such tax, but such shares shall be taxable to the owners thereof for school district and parish purposes, and this proviso shall apply to corporations mentioned in the forty-sixth section of said chapter thirteen.

See ch. 13, § 57.

§ 28. Any shareholder who, with intent to avoid taxation, fraudulently transfers a share of corporate stock, or fraudulently causes or procures a certificate of a share to be issued to any person other than himself, or in any name other than his own; or refuses to inform, or wilfully misinforms, the corporation respecting his name or residence; or, having changed his residence to another city or town in the commonwealth, wilfully omits to give notice thereof to any corporation in the commonwealth in which he is a shareholder, shall forfeit one-half of the par value of the shares so transferred, issued, or owned by him in the stock of such corporation, to be recovered by an action of tort to the use of the city or town in which he resides.

See ch. 105, § 23, and cross-references.

## CHAPTER XII.

### Of the Collection of Taxes.

Sec. 8. Distress and sale of taxes, and property exempt from same.

11. Seizure of shares, how made.
12. Sale of shares seized, how made.
13. Surplus to be returned to owner.

§ 8. (As amended May 23, 1888.) If a person refuses or neglects for fourteen days after demand, to pay his tax, the collector shall, without unnecessary delay, levy the same by distress or seizure and sale of his goods, including any share or interest he may have as a stockholder in a corporation incorporated under authority of this commonwealth, \* \* \*

See ch. 13, § 54; §§ 11-13, post.

§ 11. (As amended May 23, 1888.) The seizure of a share or other interest in a corporation may be made by leaving with any officer of the corporation, with whom a copy of a writ may by law be left when the share of a stockholder is attached on mesne process, an attested copy of the warrant, with a certificate thereon, under the hand of the collector, setting forth the tax which the stockholder is to pay, and that, upon his neglect or refusal to pay, the collector has seized such share or interest.

§ 12. (As amended May 23, 1888.) The sale of such share or interest shall be made in the manner prescribed by law for the sale of goods by collectors of taxes in like cases, and also subject to the provisions of sections forty-eight and forty-nine of chapter one hundred and seventy-one of the public statutes respecting sales on executions.

§ 13. If the distress or seizure is sold for more than the tax and charges of keeping and sale, the collector shall return the surplus to the owner, upon demand, with an account in writing of the sale and charges.

## CHAPTER XIII.

### Of the Taxation of Corporations.

- Sec. 4. Corporations holding bonds or stock as collateral, to make returns to tax commissioner; commissioner to transmit lists to assessors.
5. Penalty for neglect of corporation.
  7. Guardians, executors, etc., to make annual returns to tax commissioner of stocks held; penalty for neglect.
  38. Home corporations, for purposes of business or profit, having capital stock divided into shares, except banks, etc., to return annually to tax commissioner names of shareholders, etc.
  39. Tax commissioner to ascertain market value of shares, and estimate fair cash valuation of all the shares; also value of real estate, etc.
  40. Such corporations to pay annual tax upon corporate franchise; rate, how determined; deductions.
  41. Remedy of corporation when tax commissioner fixes value of real estate, etc., less than the assessors do; commissioners may appear and be heard in case of appeal.
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  59. Corporations taxable, to submit books to inspection, and officers to examination.
  60. Tax on franchise not to prevent, etc., the imposition and collection of other taxes authorized by law.

§ 4. Every corporation established within the commonwealth by special charter, or organized under the general laws thereof, which on the first day of May in any year holds, as collateral security for borrowed money or other liability, bonds of any description or shares of stock in corporations other than those subject to taxation on their corporate franchises or stock under the provisions of this chapter, shall annually, between the first and tenth days of May, return to the tax commissioner the whole number of such shares and bonds so held, the names and residences of the persons pledging the same, and the number, denomination, and the par and cash market value, if known, of the shares and bonds pledged by each; and the tax commissioner shall, on or before the twentieth day of June in each year, transmit to the assessors copies of the list furnished by such corporations.

See §§ 5, 7, 38, 48, 54, post; ch. 225, Acts 1887 at p. 49.

§ 5. A corporation neglecting or refusing to make the returns required by the preceding section, or wilfully making a return which is materially false or defective, shall forfeit for each offense not less than fifty nor more than one thousand dollars, to be recovered by an action of tort to the use of the city or town in which the person pledging such stock or bonds resides.

Penalty for neglect by guardian. § 7, post. Same by corporations. § 54, post. Liable to injunction. § 55.

§ 7. Every guardian who holds, or whose ward holds, shares or stock in any corporation, \* \* \* and every executor, administrator, or other person who holds in trust any such stock, shall, between the first and tenth days of May in each year, return under oath to said commissioner the names and residences, on the first day of that month, of themselves and of all such wards or other persons to whom any portion of the income from such stock is payable, the number of shares of stock so held, and the name and location of the corporation, company, partnership, or association in which they are held.

\* \* \* \* \*

See §§ 4, 5, ante.

§ 38. Every corporation chartered by the commonwealth, or organized under the general laws, for purposes of business or profit, having a capital stock divided into shares, excepting banks whose shares are otherwise taxable under this chapter, and except those specified in sections forty-three and forty-six, shall annually, between the first and the tenth day of May, return to the tax commissioner, under the oath of its treasurer, a complete list of its shareholders, with their places of residence, the number of shares belonging to each on the first day of May, the amount of the capital stock of the corporation, its place of business, the par value and market value of the shares on said first day of May. Such return shall, in the case of stock held as collateral security, state not only the name of the person holding the same, but also the name of the pledger and his residence. The returns shall also contain a statement in detail of the works, structures, real estate, and machinery owned by said corporation and subject to local taxation within the commonwealth, and of the location and value thereof. Railroad and telegraph companies shall return the whole length of their lines, and the length of so much of their lines as is without the commonwealth; other corporations required to make a return under this section shall also return the amount, value, and location of all works, structures, real estate, and machinery owned by them and subject to local taxation without the commonwealth: Provided, That nothing herein contained

shall exempt any corporation from making all returns required by its charter.

See § 4, ante; § 40, post.

[A corporation having a capital stock divided into shares, is not taxable for cash in its treasury. *Fall River v. Bristol*, 125 Mass. 567.

A foreign corporation is taxable for stock, employed in manufacture in a town within the commonwealth, where it carries on its business. *Blackstone Co. v. Blackstone*, (13 Gray) 79 Mass. 488. And upon property pledged to it as collateral security for money loaned, and for it sells when not redeemed. *Loan Co. v. Boston*, 137 Mass. 332.

As to a domestic joint-stock company, see *Hoadley v. Essex*, 105 Mass. 519.

The ascertainment, by the tax commissioner, of the market value of the capital stock of a corporation, over the value of its real property and machinery, is not subject to revision by any other tribunal. *Comm. v. Carry Co.*, 98 Mass. 19.

It is no reason for the abatement of a tax that, in computing the market value of the shares of a corporation, the tax commissioner omits to make any deduction for investments in United States bonds. *Comm. v. Hamilton Co.*, (12 Allen) 94 Mass. 298; *Ins. Co. v. Loud*, 99 id. 146. See also *Comm. v. Provident Inst.*, (12 Allen) 94 Mass. 312; *affd.*, 6 Wall. 611.

Nor where the corporation declared a dividend of twenty per cent. on existing shares, payable, at its option, in six years, either in money or new stock, that in estimating the market value of the old shares, no deduction was made on account of the dividend. *R. R. v. Comm.*, 100 Mass. 299.]

§ 39. The tax commissioners shall ascertain from the returns or otherwise, the true market value of the shares of each corporation included in the provisions of the preceding section, and shall estimate therefrom the fair cash valuation of all said shares constituting its capital stock on the first day of May next preceding, which shall be taken as the true value of its corporate franchise for the purposes of this chapter. He shall also ascertain and determine the value and amount of all real estate and machinery owned by each corporation, and subject to local taxation, and of the deductions provided in the following section; and for this purpose he may take the amount or value at which such real estate and machinery are assessed at the place where the same are located as the true amount or value; but such local assessment shall not be conclusive of the true amount or value thereof.

See §§ 41, 53, 58, post.

§ 40. Every corporation embraced in the provisions of section thirty-eight shall annually pay a tax upon its corporate franchise at a valuation thereof equal to the aggregate value of the shares in its capital stock, as determined in the preceding section, after making the deductions provided for in this section, at a rate determined by an apportionment of the whole amount of money to be raised by taxation upon property in the commonwealth during the same current year, as returned by the assessors of the several cities and towns under section eighty-six of chapter eleven, upon the aggregate valuation of all the cities and towns for the preceding year, as returned under sections fifty-four



and fifty-five of said chapter: Provided, That in case the return from any city or town is not received prior to the twentieth day of August, the amount raised by taxation in said city or town the preceding year, as certified to the secretary of the commonwealth, may be adopted for the purpose of this determination; And provided, further, That the amount of tax assessed upon polls the preceding year, as certified to the secretary, may be taken as the amount of poll-tax to be deducted from the whole amount to be raised by taxation, for the purpose of ascertaining the amount to be raised by taxation upon property. From the valuation, ascertained and determined as aforesaid, there shall be deducted, first, in case of railroad and telegraph companies, whose lines extend beyond the limits of the commonwealth, such portion of the whole valuation of their capital stock, ascertained as aforesaid, as is proportional to the length of that part of their line lying without the commonwealth; and also an amount equal to the value, as determined by the tax commissioners of their real estate and machinery located and subject to local taxation within the commonwealth: Second, in case of other corporations, included in section thirty-eight of this chapter, an amount equal to the value, as determined by the tax commissioner, of their real estate and machinery, subject to local taxation, wherever situated: Provided, That, whenever the charter of a corporation provides a different method of ascertaining the valuation of its corporate franchise for the purposes of this chapter, the same shall be ascertained in the method provided in such charter.

See ch. 11, § 4.

§ 41. In case the value of the real estate and machinery located within the commonwealth, of any corporation, as determined by the commissioner, is less than the value as determined by the assessors of the city or town where such real estate or machinery is taxable, said commissioner shall notify the corporation of such determination, and if it does not, within one month from the date of such notice, make application to said assessors for an abatement, and does not, in case of the refusal of said assessors to grant an abatement, forthwith prosecute an appeal in accordance with the provisions of section seventy-one of chapter eleven, and give notice thereof to the tax commissioner. Such determination shall be conclusive upon said corporation. The tax commissioner may appear before the county commissioners and be heard upon any appeal made to them, and the decision of the county commissioners shall be conclusive as to the value.

See § 58, post.

§ 47. Companies \* \* \* having a location or place of business within this commonwealth, in which the beneficial interest is

held in shares which are assignable without consent of the other associates specifically authorizing such transfer, shall be subject to the provisions of sections thirty-eight to forty-one inclusive, fifty-three to fifty-seven inclusive, and sixty to sixty-six inclusive, and the tax provided for in section forty shall be paid by such company, \* \* \* upon the aggregate value of the shares of said capital stock, in the manner provided in this chapter for taxes upon corporations taxed under section forty.

See § 4, ante.

§ 48. The return required by section thirty-eight when made by such company, \* \* \* shall be made by the treasurer, agent, trustee, superintendent, or business manager of the same.

See § 4, ante, and cross-references.

§ 49. Every company, \* \* \* to be taxed under the two preceding sections shall, when required, submit its books to the inspection of the tax commissioner and assessors of the city or town in which the same is located; and its treasurer, agent, trustee, superintendent, and business manager shall be subject to examination on oath by the tax commissioner and assessors in regard to all matters affecting the taxation of the same.

See § 59, post. Record of transfer of stock to be kept. Ch. 105, § 23.

§ 53. The tax commissioner shall, as soon as may be after the first Monday in August, in each year, notify the treasurer of each corporation, \* \* \* of the amount of its tax under sections twenty-five, forty, forty-two, forty-five, forty-seven, fifty, and fifty-two, to become due and payable to the treasurer of the commonwealth within thirty days from the date of such notice: Provided, That it shall not be due and payable earlier than the first day of November. Such notice shall also state that within ten days after the date thereof the said corporation, \* \* \* may apply for a correction of said tax, and be heard thereon before the board of appeal hereinafter established.

§ 54. Any corporation, \* \* \* taxable under the provisions of sections forty, forty-two, forty-three, forty-five, forty-seven, fifty, and fifty-two, neglecting to make the returns required by this chapter, or refusing or neglecting, when required thereto, to submit to the examinations provided for therein, shall forfeit two per cent. upon the par value of its capital stock; all which penalties may be recovered by an action of tort, brought in the name of the commonwealth, either in the county of Suffolk or in the county where the corporation is located. If any corporation, \* \* \* fails to pay the taxes required to be paid to the treasurer of the commonwealth under the provisions of said sections forty, forty-two, forty-three, forty-five, forty-seven, fifty, fifty-one, and

fifty-two, he may forthwith commence an action of contract in his own name, as treasurer, for the recovery of the same, with interest at the rate of twelve per cent. per annum until the same are paid. All penalties under this section, and under sections seven, forty-seven, fifty, and fifty-two, may also be enforced, and all taxes under said sections forty, forty-two, forty-three, forty-five, forty-seven, fifty, fifty-one, and fifty-two, may also be collected by information brought in the supreme judicial court at the relation of the treasurer of the commonwealth, and upon such information the court may issue an injunction restraining the further prosecution of the business of the corporation, \* \* \* until all such taxes due or penalties incurred shall be paid, with interest at the rate aforesaid, and costs. In any proceeding under this section the certificate of the tax commissioner or his deputy shall be competent evidence of all determinations made and notices given by him, and of all values, amounts, and other facts required to be fixed or ascertained by him under this chapter.

Penalty for neglect. § 5, ante. Same. § 55, post. See ch. 12, §§ 8-13.

§ 55. Any corporation \* \* \* which fails to make a return required by the provisions of sections thirty-eight, forty-two, forty-three, forty-four, forty-six, forty-eight, fifty, and fifty-two, shall be liable on application of the tax commissioner therefor to any of the justices of the supreme judicial court, to injunction restraining the same and the agents thereof from the further prosecution of its business, until the returns required by law shall be made.

See § 5, ante.

§ 56. The lessee of the works, structures, real estate, or machinery of any corporation, \* \* \* under sections forty, forty-two, forty-three, forty-five, forty-seven, fifty, fifty-one, and fifty-two, shall be liable as well as the lessor to pay the amount of said tax, and upon such payment may, in the absence of any agreement to the contrary, retain the same out of the rent of the property, or recover the same in an action against the lessor.

§ 57. No taxes shall be assessed in any city or town for State, county, or town purposes, upon the shares in the capital stock of corporations, companies, copartnerships, or associations, taxable under sections forty, forty-two, forty-five, forty-seven, fifty, and fifty-two, for any year for which they pay to the treasurer the tax on their corporate franchises or property under said sections; but such proportion of the tax collected of each corporation, company, copartnership, or association, under sections forty, forty-seven, fifty, and fifty-two, as corresponds to the proportion of its stock

owned by persons residing in this commonwealth, shall be credited and paid to the several cities and towns where it appears from the returns or other evidence that such shareholders resided on the first day of May next preceding, according to the number of shares so held in such cities and towns respectively; Provided, That in case stock is held by copartners, guardians, executors, administrators, or trustees, the proportion of tax corresponding to the amount of stock so held shall be credited and paid to the towns where the stock would have been taxed, under the provisions of the fourth, fifth, sixth, and seventh clauses of section twenty and of section twenty-four of chapter eleven; And provided, further, That when a town owns stock in any corporation taxed upon its corporate franchise under this chapter, a return to said town shall be made in like manner as is provided in the case of stock held by individuals residing in said town.

See ch. 11, § 4.

§ 58. Said commissioner shall ascertain and determine the amount due to each city and town under the preceding section, subject to appeal to the board of appeal constituted as hereinafter provided, and shall notify the treasurer of each city and town thereof, and certify the amount, as finally determined, to the treasurer of the commonwealth, who shall thereupon pay over the same.

See § 41, ante.

§ 59. Every corporation taxable under the provisions of section twenty-five and of sections thirty-eight to fifty-two inclusive, excepting corporations taxable under section forty-six, shall, when required, submit its books to the inspection of the tax commissioner, and its treasurer and directors to examination on oath in regard to all matters affecting the determinations which are to be made by said commissioner.

See § 49, ante.

§ 60. The tax on corporate franchises herein imposed upon any corporation shall not affect nor prevent the imposition and collection of any other tax now authorized, or that may hereafter be authorized, upon any special privileges, franchises, or business, enjoyed or exercised by such corporation.

See ch. 11, § 4.

## TITLE XII. OF THE REGULATION OF TRADE IN CERTAIN CASES.

### CHAPTER LXXVII.

#### Of Money, Bonds, Bills of Exchange, Etc.

Sec. 4. Certain bonds of corporations to be negotiable.

5. Issue of bonds, etc., payable to person named, in exchange for those payable to bearer.



Issue of bonds, etc. — P. S., ch. lxxvii, §§ 4-7; ch. lxxviii, § 6; ch. lxxxvi, § 12; ch. civ, §§ 13, 14.

Sec. 6. Issue of new bonds, etc., in case of transfer of those payable to persons named.  
7. Corporations, etc., to keep register of bonds, etc., payable to persons named.

§ 4. A bond or other obligation under seal issued by a corporation or joint-stock company for the payment of money, if purporting to be payable to order, to bearer, or to a person designated or bearer, shall be negotiable in the same manner and to the same extent as a promissory note.

§ 5. Every county, city, and town in the commonwealth, and every corporation organized under its laws, may at the request of the owner or holder of any bond, promissory note, or certificate of indebtedness issued by it payable to bearer, at any time while more than one year remains before the principal of such bond, note, or certificate is payable, issue in exchange therefor a bond, note, or certificate of the same effect, payable to the owner or holder by name.

See ch. 78, § 6. Issue of new bonds. § 6, post. Register of bonds. § 7, post. Certain obligations, issue of, prohibited. Acts of 1891, ch. 382. Same, foreign corporations. Acts of 1894, ch. 476.

§ 6. Any person to whom a bond, note, or certificate issued under the preceding section is transferred by operation of law, or by assignment acknowledged before an officer authorized to take acknowledgments of deeds conveying real estate in this commonwealth, shall be entitled in exchange therefor to a new bond, note, or certificate of the same effect, payable to him by name.

Issue of bonds. § 5, ante.

§ 7. Every \* \* \* corporation shall keep a register showing the number, date, amount, and rate of interest of every bond, promissory note, or certificate of indebtedness issued by it under the two preceding sections; of the time when and the name of the person to whom the same is payable; and of the bonds, notes, or certificates, if any, which were received in exchange therefor; and shall be entitled to a fee of fifty cents for every bond, note, or certificate so registered.

See § 5, ante.

### **TITLE XIII. OF THE PREVENTION OF FRAUDS AND PERJURIES.**

#### **CHAPTER LXXVIII.**

#### **Of the Prevention of Frauds and Perjury.**

Sec. 6. Contracts for sale of certain bonds, stocks, etc., to be void, unless vendor is the owner, etc.

§ 6. Every contract, written or oral, for the sale or transfer \* \* \* of stock or a share or interest in the stock of a bank, company, \* \* \* incorporated under a law of the United States or of an individual State, shall be void, unless the party contracting to sell or transfer the same is, at the time of making the contract, the owner

or assignee thereof, or authorized by the owner or assignee or his agent to sell or transfer the certificate or other evidence of debt, share, or interest so contracted for.

See ch. 77, §§ 4 et seq.

### **TITLE XIV. OF THE INTERNAL POLICE OF THE COMMONWEALTH.**

Ch. 86. Of alien passengers and State paupers.  
104. Of the inspection of buildings.

#### **CHAPTER LXXXVI.**

#### **Of Alien Passengers and State Paupers.**

Sec. 12. Corporations bringing strangers into State to labor, to give bond for their support.

§ 12. Every corporation which brings into this commonwealth any person not having a settlement therein, or by whose means or at whose instigation any such person is so brought, for the purpose of performing labor for such corporation, shall give a bond to the commonwealth, to be delivered to the State board, in the sum of three hundred dollars, conditioned that neither such person, nor any one legally dependent on him for support, shall within two years become a city, town, or State charge.

See Acts of 1894, ch. 508.

#### **CHAPTER CIV.**

#### **Of the Inspection of Buildings.**

Sec. 13. Rules for belting, etc., in factories, and for cleaning machinery.  
14. Rules for hatchways, etc.

§ 13. The belting, shafting, gearing, and drums of all factories, when so placed as to be, in the opinion of the inspectors mentioned in section nine of chapter one hundred and three,\* dangerous to persons employed therein while engaged in their ordinary duties, shall be as far as practicable securely guarded. No machinery, other than steam engines, in a factory, shall be cleaned while running, if objected to in writing by one of said inspectors. All factories shall be well ventilated and kept clean.

See Acts of 1894, ch. 508.

§ 14. (As amended May 10, 1882.) The openings of all hoistways, hatchways, elevators, and well-holes, upon every floor of a factory, or mercantile or public buildings, shall be protected by good and sufficient trap doors, or self-closing hatches and safety catches, or such other safeguards as said inspectors direct; and all due diligence shall be used to keep such trap doors closed at all times, except when in actual use by the occupant of the building having the use and control of the same. All elevator cabs or cars, whether used for freight or passengers, shall be provided with some suitable me-

\* Inspectors of factories.



## Corporations; application of act — P. S., ch. cv, §§ 1-3.

chanical device, to be approved by the said inspectors, whereby the cabs or cars will be securely held in the event of accident to the shipper rope, or hoisting machinery, or from any similar cause.

See Acts of 1894, ch. 508.

**TITLE XV. OF CORPORATIONS.**

- Ch. 105. Of certain powers, duties and liabilities of corporations.  
106. Of manufacturing and other corporations.

**CHAPTER CV.****Of Certain Powers, Duties and Liabilities of Corporations.**

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Section 1. The provisions of this chapter, unless expressly limited in their application, shall apply to all corporations organized under or by the laws of this commonwealth, except so far as they are inconsistent with other provisions of these statutes concerning particular classes of corporations.

Manufacturing and other corporations. Ch. 106, §§ 1 et seq.

§ 2. Corporations now existing shall continue to exercise and enjoy their powers and privileges, according to their respective charters and to the laws now in force, and shall continue subject to all the liabilities to which they are now subject, except so far as said powers, privileges, and liabilities are modified or controlled by the provisions of these statutes; and all corporations organized under general laws shall be subject to such laws as may be hereafter passed, and applicable thereto.

See ch. 106, §§ 4, 22.

§ 3. Every act of incorporation passed after the eleventh day of March in the year eighteen hundred and thirty-one shall be subject to amendment, alteration, or repeal at the pleasure of the general court: but the corporation, notwithstanding such repeal, shall be subject to the provisions of sections forty-one and forty-two; and such amendment, alteration, or repeal shall not take away or impair any other remedy which may exist by law consistently with those sections against the corporation, its members or officers, for a liability previously incurred.

Notice to be given. Ch. 2, § 7. Right of amendment. Ch. 106, § 5.

[The charter of, or other privilege or right granted by act of the legislature, to a private corporation is within the protection of the United States Constitution; and the rights thereby granted to the corporation cannot be impaired by a subsequent statute. *Wales v. Stetson*, 2 Mass. 143; *Nichols v. Bertram*, (3 Pick.) 20 id. 342; *Hardy v. Waltham*, (7 Pick.) 24 id. 108; *Opn. of the Justices*, (9 Cush.) 63 id. 604; *Comm. v. Bridge*, (2 Gray) 68 id. 339; *R. R. v. R. R.*, (2 Gray) id. 1; *Comm. v. Essex Co.*, (13 Gray) 79 id. 239; *College v. Boston*, 104 id. 470.

The charter of a corporation does not exempt its property, or the use of its property from the control of the legislature, by acts of general application, enacted in the exercise of its police power, for the security of public health, morals, safety, or comfort, although the statute practically

amounts to a prohibition. *Brown v. Banks*, 8 Mass. 445; *Bank v. Chickering*, (4 Pick.) 21 id. 314; *Bridge v. Warren Bridge*, (7 Pick.) 24 id. 344; *Comm. v. Bank*, (21 Pick.) 38 id. 542; *Soc. v. Curtis*, (22 Pick.) 39 id. 320; *Comm. v. Alger*, (7 Cush.) 61 id. 53; *Opn. of Justices*, (9 Cush.) 63 id. 604; *R. R. v. Wakefield*, 103 id. 261; *Sohier v. Church*, 109 id. 1; *Comm. v. Liquors*, 115 id. 153; *Cemetery v. Everett*, 118 id. 354; *Comm. v. Man. Co.*, 120 id. 383.

A reservation of the right to alter, amend, or repeal the charter of the corporation, contained within the charter itself or in a general act, reserves to the legislature the authority to make any amendment or alteration of a charter subject to it, which the legislature shall deem proper, either by direct amendment, or by a general act, or by a special act, applying to the particular corporation. *Comrs. v. Holyoke Co.*, 104 Mass. 446; *affd.* by U. S. Supreme Ct., 15 Wall. 500; *Worcester v. R. R.*, 109 Mass. 103; *Thornton v. Ry.*, 123 id. 32. See also *Roxbury v. R. R.*, 60 id. 424; *Hospital v. State Co.*, (4 Gray) 70 id. 227; *R. R. v. R. R.*, (4 Allen) 86 id. 198; *Comm. v. R. R.*, 103 id. 254; *Parker v. R. R.*, 109 id. 506; *R. R. v. Ry.*, 118 id. 290.]

§ 4. Every corporation, where no other provision is specially made, may (1) in its corporate name sue and be sued, appear, prosecute, and defend to final judgment and execution;

Foreign corporation may be sued. § 28, post. Warrants of distress, proceedings, etc. §§ 29-39, post. To continue after dissolution to prosecute and defend suits. § 41, post. Commencement of actions, service of summons. Ch. 161, §§ 8 et seq. Action not to abate, when. Ch. 165, § 26. Evidence. Ch. 169, § 68. Judgment and execution. Ch. 171, § 19 et seq.; ch. 215, §§ 30, 31. Answer of corporation. Ch. 183, § 16. Indictment. Ch. 210, § 26. Costs. Ch. 198, § 33. Suits may be defended by stockholder. Ch. 106, §§ 70, 71. Verification of pleadings by corporations. Ch. 167, § 86. Corporate existence cannot be controverted, when. Ch. 167, § 87, and note.

[The giving of the treasurer's bond is not a condition precedent to the right to sue. *Boston Co. v. Moring*, (15 Gray) 81 Mass. 211.

A corporation may commit a trespass, and is liable to an action on the case, and subject generally to actions of tort as individuals are. *Reed v. Bank*, 130 Mass. 443. See also *Mower v. Leicester*, 9 id. 247; *Foster v. Bank*, 17 id. 479; *Moore v. R. R.*, (4 G.) 70 id. 465; *Barrett v. R. R.*, (3 Allen) 85 id. 101. Thus a corporation, although a savings bank, is liable to an action for malicious prosecution. *Reed v. Bank*, 130 Mass. 443. And generally, a corporation is liable, even where a fraudulent intent in fact is necessary to be proved, the fraud or malice of its authorized agents being imputable to the corporation. *Id.*

A joint action of tort lies against a corporation and its servant, for a personal injury inflicted by the servant in the discharge of duties, although they might have been equally well discharged without undue or illegal force. *Hewett v. Swift*, (3 Allen) 85 Mass. 420; *Holmes v. Wakefield*, (12 Allen) 94 id. 580.

An action lies by the owner of a raft against a canal company, bound by statute to maintain the canal of a depth and width sufficient to enable rafts of that description to pass, for injuries sustained for insufficient depth and width. *Riddle v. Locks*, 7 Mass. 169.

A corporation, authorized to construct a public work, which does not use due care in the constructing or maintaining it, is liable to an action of tort, by any person injured by the negligence. *Bryant v. Carpet Co.*, 131 Mass. 491. See also *Rowe v. Bridge*, (21 Pick.) 38 Mass. 344; *Estab-*

*brooks v. R. R.*, (12 Cush.) 66 id. 224; *Perry v. Wooster*, (6 G.) 72 id. 544; *Sprague v. Wooster*, (13 G.) 79 id. 193.

A corporation owning a toll-bridge may maintain a bill in equity, to restrain a city from unlawfully laying out a highway over the bridge. *Bridge v. Lowell*, (4 G.) 70 Mass. 174.

A corporation is a necessary party to a suit in equity against its trustees, to restrain the misappropriation of a fund held by it in trust. *Tibbals v. Bidwell*, (1 Gray) 67 Mass. 399. Or to compel to apply funds to the payment of a demand against the corporation. *Lyman v. Bouney*, 101 Mass. 562.

So it must be made a party to a bill against the holder of a majority of the shares, to restrain corporate acts ultra vires. *Price v. Minot*, 107 Mass. 49.

Or to prevent its officers from paying out money. *Allen v. Turner*, (11 Gray) 77 Mass. 436.

A member of the corporation, although not an officer, is properly made a party to a bill for discovery and relief, and must answer so much of the bill as seeks discovery, although the bill states no special reason for making him a party. *Wright v. Dane*, (1 Met.) 42 Mass. 237.

Where note in the form, "I promise to pay" is signed "E., Prest. and Treas. C. Company," an action lies upon the same against E., not against the company. *Davis v. England*, 141 Mass. 587; s. c., 6 N. E. Rep. 731.

Upon a note payable to the cashier of a bank, or his order, an action lies in favor of the bank, where the consideration proceeded from it. *Bank v. French*, (21 Pick.) 38 Mass. 486.

Seemle, that records of a corporation, certified by the recording, are evidence in actions between the members relating to corporate matters. *Oakes v. Hill*, (14 Pick.) 31 Mass. 442. See, however, *Bank v. Hamlin*, 14 Mass. 178; *Hastings v. Turnpike*, (9 Pick.) 26 id. 80; *Stebbins v. Merit*, (10 Cush.) 64 id. 27.

The record is evidence in an action between the clerk who made it and the corporation; and the fact that he recorded the vote is evidence in his favor that he accepted his election to the office. *Delano v. Charities*, 138 Mass. 63.

The knowledge of a stockholder in a manufacturing company, of the existence of certain facts, is not notice of the facts to the corporation. *Bank v. Martin*, (1 Met.) 42 Mass. 294.

A corporation cannot maintain an action upon a contract made, before its incorporation, between the defendant and the person afterward incorporated, contemplating such incorporation, and the business to be done thereafter, unless it has in some manner become a party to the contract since its incorporation. *Match Co. v. Hapgood*, 141 Mass. 145; s. c., 7 N. E. Rep. 22.

A private corporation is liable to an action by a traveler, for injury from an obstruction, maintained by it in the highway, although it was done extra vires. *Taylor v. Boston*, (12 Gray) 78 Mass. 415.

Though an incorporation is for the purpose of manufacturing woollens, the corporation may sue for the value of groceries, dry goods, etc., sold for it from a store kept by one who was its undisclosed agent. *Woolen Co. v. Lamb*, 143 Mass. 420; s. c., 9 N. E. Rep. 823.

A stockholder cannot maintain a suit in equity against the corporation and certain of its officers to seek redress against mismanagement, where he fails to show an attempt made within the corporation, or that an attempt, if made, would have been futile, and where, moreover, years have passed since some of the acts complained of were done. *Dumphy v. Assn.*, 146 Mass. 495; s. c., 16 N. E. Rep. 426.

Where the master is a corporation, the officers or agents charged with the duty of supplying the machinery, etc., or selecting the foreman, etc., are not fellow servants of the operator's but are charged with the master's duties. *Ford v. R. R.*, 110 Mass. 240; *Holding v. R. R.*, 129 id. 268; *Lawless v. R. R.*, 136 id. 1. In the absence of statutory requirements, a manufacturing company using a mill otherwise properly constructed, is not liable



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to employ for failure to provide an escape from fire, not caused by its own negligence. *Jones v. Mills*, 126 Mass. 84; *Kelch v. Mills*, id. 90.

Where the agent of a corporation has given a note in his own name, the corporation, by ratification, adopts the name as its own and is liable thereupon. *Milledge v. Iron Co.*, (5 Cush.) 59 Mass. 158.

A corporation is, and an agent is not, liable for agent's act and omissions in the discharge of its authorized functions, but not where he is acting in a manner to which they do not extend. *Thayer v. Boston*, (19 Pick.) 36 Mass. 511; *Lowell v. R. R.*, (23 Pick.) 40 id. 24; *Moore v. R. R.*, (4 Gray) 70 id. 465. See also *Iron Co. v. Cone*, 102 id. 80; *Niekersen v. Dyer*, 105 id. 320.

Where the agent acts by authority of an officer of the corporation, and the evidence leaves it doubtful whether he was the officer's or the corporation's agent, that question is for the jury. *Delano v. Curtis*, (7 Allen) 89 Mass. 470.

Averments held insufficient to show a request for directors to sue. *Warren v. Para Rubber Shoe Co.*, 166 Mass. 97; s. c., 44 N. E. Rep. 112.

A corporation cannot defend against a promissory note, issued by authority of its board of directors, in the hands of a bona fide indorsee for value before maturity. *Kneeland v. Ry. Co.*, 45 N. E. Rep. 86.]

(2) Have a common seal, which it may alter at pleasure;

(3) Elect in such manner as it may determine all necessary officers, fix their compensation, and define their duties and obligations;

See § 12, post. Officers, when and how chosen. Ch. 106, §§ 20, 24. Business managed by officers. Ch. 106, § 23, and note. Number of directors, clerk, etc. Ch. 106, §§ 25, 26.

(4) And make by-laws and regulations consistent with law, for its own government, the due and orderly conducting of its affairs, and the management of its property.

By-laws, when adopted. Ch. 106, § 20. To provide for what. § 5, post. To provide for manner of choosing officers. Ch. 106, § 24.

[A by-law which is partly void as being in excess of powers is not necessarily wholly void. *Amesbury v. Ins. Co.*, (6 G.) 72 Mass. 596.]

**[Powers and liabilities in general.]**—In general a corporation has no powers, except such as are given to it by statute, either expressly or by necessary implication. *Parish v. Cole*, (3 P.) 20 Mass. 232; *Salem v. Ropes*, (6 P.) 23 id. 23. See also *Soc. v. Shaw*, 8 id. 532.

Neither a railroad corporation, nor a corporation for the manufacture of musical instruments, has any power to guarantee the payment of the expenses of a musical festival; and an action will not lie against either corporation upon such a guaranty. *Davis v. R. R.*, 131 Mass. 258.

A manufacturing corporation cannot enter into partnership with an individual. *Mills v. Upton*, (10 G.) 76 Mass. 582.

But such a corporation may take another manufacturing corporation's shares in payment of a debt. *Howe v. Carpet Co.*, (16 G.) 82 Mass. 493.

In the absence of any legislative provision to the contrary, a corporation may hold and sell its own stock, and may receive it in pledge or payment in the lawful exercise of its corporate powers. *Dupee v. Boston Co.*, 114 Mass. 37. See also *Nesmith v. Bank*, (6 P.) 23 id. 324; *American Co. v. Haven*, 101 id. 398; *Leland v. Hayden*, 102 id. 542.

A corporation chartered to publish pious and useful books, etc., with power to create a permanent fund, the income from which is limited, may, if the income does not exceed the limited sum, re-

ceive a sum of money, on condition that it will return it, if an additional amount is not raised within a certain time; and if a question arises as to the performance of the condition, may submit it to arbitration. *Morville v. Soc.*, 123 Mass. 129. Generally, as to the effect of the expression *ultra vires*, see *Bank v. Porter*, 125 Mass. 333; *Reservoir v. McKensie*, 132 id. 71.

A purchaser of goods cannot object that the corporation had no authority to carry on such a trade. *Glass Co. v. Dewey*, 16 Mass. 94.

A corporation, acting without authority, is not in the position and with the privileges of an infant, to avoid an improvident contract; but is in the position, and subject to the disabilities, of a wrongdoer. *Bank v. Rogers*, 125 Mass. 339.

So it cannot recover back money paid under an executed contract, on the ground that it had no power to make it. Id.

A corporation cannot object, as against a bona fide holder, that its note was an accommodation note, which it had no power to make. *Bird v. Daggett*, 97 Mass. 494; *Bank v. Globe Works*, 101 id. 57.

Where a corporation makes an executory contract, which is *ultra vires*, and fails to execute it, assumpsit upon an implied promise lies to recover back the money, paid thereon by the other party. *White v. Bank*, (22 P.) 39 Mass. 181; *Dill v. Wareham*, (7 Met.) 48 id. 438; *Morville v. Soc.*, 123 id. 129.

The corporation is bound by contracts, made in its behalf by its agents and officers, only so far as they act within the scope of the authority conferred upon them. *Tippett v. Walker*, 4 Mass. 595; *Hayden v. Turnpike*, 10 id. 397; *Wyman v. Bank*, 14 id. 58; *Bank v. Bank*, 17 id. 1; *Foster v. Bank*, id. 479; *White v. Man. Co.*, (1 Pick.) 18 id. 215.

But an excess of power, by an officer or agent, may be subsequently ratified by the corporation, either expressly or by implication from its acts, and then the act binds the corporation. *Turnpike v. Collins*, 8 Mass. 232; *Bank v. Bank*, 17 id. 1; *Thayer v. Boston*, (19 Pick.) 36 id. 511; *Parish v. R. R.*, 141 id. 500; s. c., 6 N. E. Rep. 749.

A corporation, like an individual, is bound by an implied promise. *Smith v. Meeting House*, (8 Pick.) 25 Mass. 178.

A corporation may adopt, for the purpose of signing its notes, the firm name of its general agents, in which case it is bound by notes thus signed; and such adoption may be inferred from the acts and statements of the agents, and the acquiescence of the corporation. *Melledge v. Iron Co.*, (5 Cush.) 59 Mass. 158.

Where a contract is made between a corporation and one of its members, the corporation cannot, by its votes or acts, affect the rights of the other party. *Revere v. Copper Co.*, (15 Pick.) 32 Mass. 551.

Where the same persons compose two different corporations and a proposition is made by one corporation to the other, and partly executed by both without a vote of acceptance by the latter, an acceptance by the latter may be inferred. *Bridge v. Gordon*, (1 Pick.) 18 Mass. 297.

Where persons, acting as a corporation, are afterwards incorporated, and the new corporation takes property of the former association, and agrees to receive and pay all claims in favor of or against the former association, it is liable for a note given by the latter. *Soc. v. Church*, (1 Pick.) 18 Mass. 372.

An order for goods addressed to a corporation, and accepted by "A. B., treasurer," he being the treasurer, is accepted by the corporation. *Rogers v. Stone Co.*, 134 Mass. 31. So a check, with the name of the corporation printed in the margin, signed "A. B., treasurer," is the check of the corporation. *Carpenter v. Fransworth*, 106 Mass. 561. So a note, purporting to be made by a corporation, and signed by its treasurer, is the note of the corporation. *Whitney v. Stow*, 111 Mass. 368. An assignment of a mortgage, purporting to be made by the corporation, sealed and signed "A. B., president," or "A. B., treasurer," is the deed of the corporation. *Hutchins v. Byrnes*, (9 Gray) 75 Mass. 367; *Murphy v. Welch*, 125 id. 489.

A corporation is chargeable with notice or knowledge of a director, who is acting for it in the particular transaction, except where he is acting also for himself, or in behalf of another, with whom he is interested in the transaction. *Innerrary v. Bank*, 139 Mass. 332; 1 N. E. Rep. 282.

Where a director, authorized by the board to contract for certain machines, made a contract in his own name, for the manufacture of patterns for such machines, and when the manufacturer presented his bill, told him to make it out against the corporation, and on his doing so, the treasurer promised that the corporation would pay it; a jury may find that the work was done for and by authority of the corporation. *Merrick v. Reynolds*, 101 Mass. 381.

Where a statute authorizes a corporation to make to a county a proposition for the sale of its stock, under its seal and the signature of its president, and authorizes the county to accept it, and the proposition is made under seal and the signature of the vice-president, and accepted, the irregularity is covered by a subsequent statute, providing that no defects or irregularities before the acceptance should invalidate the agreement. *County v. R. R.*, 121 Mass. 460.]

§ 5. Every corporation may by its by-laws, where no other provision is specially made, determine the manner of calling and conducting its meetings; the number of members that shall constitute a quorum; the number of shares that shall entitle the members to one or more votes; the mode of voting by proxy; the mode of selling shares for the payment of assessments; and the tenure of office of the several officers; and may annex suitable penalties to such by-laws, not exceeding twenty dollars for one offense; but no by-law shall be made by a corporation repugnant to law or to its charter.

See § 4, subd. 4, ante.

[See *Wiggin v. Baptist Church*, 8 Met. 301; *Davis v. Proprietors, etc.*, *Id.* 321.]

§ 6. Every corporation may convey lands to which it has a legal title.

No conveyance unless authorized by stockholders. Ch. 106, § 23. Corporation may hold real estate. Ch. 106, § 36. Manufacturing company may convey real estate. § 7, post.

[See *Richardson v. Sibley*, 11 Allen, 65.]

§ 7. A corporation organized under general laws or created by special charter, for the purpose of carrying on a mechanical or manufacturing business in a city or town named in its organization or charter, may extend or remove its business or any part thereof to any other city or town in this commonwealth, and may purchase, hold, and convey so much real and personal estate in such other city or town as may be necessary for the purpose of carrying on its business therein.

See ch. 106, § 7. Corporation may alter business Ch. 106, § 51.

§ 8. (As amended by Acts of 1898, ch. 336.) A corporation created by charter, if no time is limited therein, shall be organized within two years from the passage of its act of

incorporation. Within thirty days after the final adjournment of the meeting for organization of any corporation created by special charter it shall be the duty of the recording officer thereof to make, sign, swear to and file for record in the office of the secretary of the commonwealth, a certificate setting forth the date on which the meeting for organization was held, the names of the officers elected at such meeting, and the amount of capital stock, if any, fixed upon under its charter.

See ch. 106, § 20.

[Long exercise of corporate powers will authorize the admission of oral evidence of the existence and loss of a charter. *Dillingham v. Snow*, 5 Mass. 547; *Stockbridge v. West Stockbridge*, 12 *Id.* 400.]

§ 9. The first meeting of any such corporation, unless otherwise provided in its act of incorporation, shall be called by a notice signed by the person or a majority of the persons named therein, setting forth the time, place, and purposes of the meeting, and delivered seven days at least before the meeting to each member, or published in some newspaper of the county where the corporation is established, or, if there is no such paper, then in some newspaper of an adjoining county. The persons so named and their associate subscribers to stock before the date of the act shall be authorized to hold the franchise or privileges granted until the corporation is organized. The notice of the first meeting of an incorporated religious society may be affixed to the door or to some other conspicuous part of its meeting-house.

See § § 10, 11, post. First meeting, how called. Ch. 106, § 18. Subscribers to hold franchise. *Id.*, § 19.

[See *Walworth v. Brackett*, 98 Mass. 98; *Hawes v. Petroleum Co.*, 101 *Id.* 385.]

§ 10. The first meeting of a corporation organized under general laws which make no provision for the calling thereof may be called in the manner set forth in the articles of association, or, if they make no provision, by a notice signed by a majority of the associates, and published in the manner prescribed in the preceding section.

See § 9, ante, and cross-references.

[A vote of a corporation, which affects the liability of some of the members who are its debtors, cannot be regarded as assented to by them, if they were not present, although they had notice of the meeting. *Bank v. Baker*, (4 Met.) 45 Mass. 164.

A by-law of a corporation, which provides for calling a meeting of members by the president or secretary, on the application of ten members, does not prevent the directors from calling such a meeting. *Ins. Co. v. Sortwell*, (8 Allen) 90 Mass. 217.

If the record shows that the meeting was duly called and transacted business, the presumption is that a quorum was present. *Id.*

Meetings of members must be called by a personal notice to each, unless the charter or by-law otherwise provide. *Wiggins v. Church*, (8 Met.) 49 Mass. 301.



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If one is imbecile, etc., he need not be notified. *Stebbins v. Merritt*, (10 Cush.) 64 Mass. 27.  
The general agent may call a meeting unless the charter or by-laws otherwise provide. *Id.*]

§ 11. When by reason of the death, absence, or other legal impediment of the officers of a corporation there is no person duly authorized to call or preside at a legal meeting, a justice of the peace may, on a written application of three or more of the members, issue a warrant to either of them, directing him to call a meeting by giving such notice as had been previously required by law; and the justice may in the same warrant direct such person to preside at the meeting until a clerk is duly chosen and qualified, if no officer is present legally authorized to preside.

§ 12. A corporation when so assembled may elect officers to fill all vacancies, and act upon such other business as may by law be transacted at a regular meeting.

See § 4, subd. 3, ante, and cross-references. Tenure of office of directors determined by by-laws. § 5, ante. Choice of officers. Ch. 106, § 20. Same. Ch. 106, § 24.

§ 13. An executor, administrator, guardian, or trustee shall represent the shares or stock in his hands at all meetings of the corporation, and may vote as a stockholder.

See ch. 106, § 20.

[The right to vote, at meetings of the stockholders of a corporation, upon shares held on a trust for the benefit of the corporation, is suspended while they are so held. *Ry. Co. v. Haven*, 101 Mass. 398.]

§ 14. No officer of a corporation, unless otherwise expressly provided by law, shall as proxy or attorney cast more votes than represent twenty shares of the capital stock, unless all the shares so represented by him are owned by one person, nor ask for, receive, procure to be obtained, or use any proxy vote therein, except the votes he is hereby authorized to cast. No salaried officer of a corporation shall vote as proxy or attorney.

See § 15, post. Voting by proxy. Ch. 106, § 27. Soliciting of proxy votes. Acts of 1889, ch. 222.

[See *Ins. Co. v. Sortwell*, 8 Allen, 217.]

§ 15. An officer of a corporation who violates any provision of the preceding section shall forfeit not less than one hundred nor more than five hundred dollars for each offense; and the supreme judicial court, upon petition of a stockholder in such corporation, and after due notice and proof of such offense, shall cause such officer to be forthwith removed from his office; and such removal shall forever after disqualify him from holding office in such corporation.

[Sections 14 and 15 repealed by Stat. 1889, ch. 222, and new provisions as to lists of stockholders.]

§ 16. The par value of shares in the capital stock of every corporation hereafter organized, unless otherwise expressly provided by law, shall be one hundred dollars; and any corporation heretofore organized with shares of a par value other than said sum may change the par value to one hundred dollars.

[This section is modified by Stat. 1894, ch. 500.]

Not to be issued for less than par. § 17, post. Par value in certain corporations. Ch. 106, § 31. Shares not to be sold at less than par. Ch. 106, §§ 37-41. See Acts of 1894, chs. 500, 350, 472.

§ 17. No corporation, unless specially authorized, shall issue any share for a less amount to be actually paid in thereon than the par value of the shares first issued or fixed by a change made under the preceding section.

See § 16, ante; § 20, post.

§ 18. No telegraph or gas-light company chartered under the laws of this commonwealth shall declare any stock dividend, or divide the proceeds of the sale of stock among its stockholders; nor create any additional new stock or issue certificates thereof to any person whatever, unless the par value of the shares so issued is first paid in cash to its treasurer.

Par value to be one hundred dollars. § 16, ante. Not to pay dividend, when. § 22, post. Certificates issued in violation of this section, void. § 19, post.

§ 19. All certificates of stock issued in violation of the preceding section shall be void; and the directors of the corporation issuing the same shall be liable to a penalty of one thousand dollars each, to be recovered by indictment in any county where any of them reside; but if any such director proves that before such issue he filed his dissent in writing thereto with the clerk, or was absent and at no time voted therefor, he shall not be so liable.

See ch. 106, § 60.

§ 20. When a corporation increases its capital stock, if no other provision is made by law, its directors shall give notice in writing thereof to each stockholder who was such at the date of the vote to increase, stating the amount of the increase, the number of shares or fractions of shares of the new stock which such stockholder is entitled to take, and the time not less than thirty days from the giving of such notice within which such new stock shall be taken; and within said time each stockholder may take at par his proportion of such new shares, according to the number of his shares at the date of such vote to increase; and if, after the expiration of said time, any shares remain untaken, the directors shall sell the

same at public auction for the benefit of the corporation, but shall not sell or issue any shares for less than the par value thereof.

See § 17, ante. New shares, how disposed of. Ch. 106, §§ 37-41. Same. Acts of 1894, ch. 472. As to dividends, see note to § 27, post.

[Above section construed. *Mason v. Mills*, 132 Mass. 76.

Where a banking corporation, having by its charter the right of creating stock not less than a certain amount, and not greater than another amount, commences business with a smaller capital, and afterward increases it to the larger, a holder of shares in the original stock has a right to his pro rata of the increase, and may recover damages for a deprivation thereof. *Gray v. Bank*, 3 Mass. 364; *Wyman v. Powder Co.*, (S C.) 62 id. 168.

Where a corporation, increasing its capital stock, offers to each of its stockholders his pro rata of the new stock, on certain terms as to acceptance and payment, one who accepts as prescribed, but fails to pay the first installment, cannot, upon tender, maintain an action against the corporation for selling the shares subscribed for, as stock not taken. *Sewell v. R. R.*, (9 C.) 63 Mass. 5.

The provisions of the Revised Statutes, as to the mode of selling shares for non-payment of assessments, do not apply to such a subscription. Id.

Where a corporation issued its notes, convertible into stock at par, and before the time fixed for that purpose, voted to increase its stock, there being, at the time the notes were issued, enough stock under its control to convert all the notes, it was held that the noteholders were not entitled to the benefit of the additional stock. *Pratt v. Tel. Co.*, 141 Mass. 225; s. c., 5 N. E. Rep. 307.

Where a corporation votes to increase its capital stock, and that the stockholders may subscribe therefor pro rata, and any new shares not taken shall be sold, and the premiums paid to those entitled to subscribe, the sum received upon the sale is capital to the stockholder. *Mains v. Albee*, (12 Allen) 94 Mass. 359.

Where directors of a corporation vote a cash dividend to pay for new stock, if the issue of the stock is void for non-compliance with above section, the cash dividend cannot be claimed to one entitled to the income of certain shares. *Rand v. Hubbert*, 115 Mass. 461.

Under above section, shares of a corporation that increased its capital stock, not taken by stockholders, must be sold at public auction. *Smith v. Franklin, etc., Co.*, 168 Mass. 345; s. c., 47 N. E. Rep. 409.]

§ 21. The treasurer or cashier of every corporation shall keep an accurate list of its stockholders with the number of shares owned by each, which shall at all times, upon written application by a stockholder, be exhibited for his inspection. If such officer refuses so to exhibit such list, he shall forfeit fifty dollars for each offense.

See ch. 106, § 26. List to be exhibited to officers. Ch. 106, § 63. Treasurer shall give bond. Acts 1896, ch. 346, at p. 61.

§ 22. Every corporation shall register the name and residence of all its shareholders, and all changes therein of which it is notified; shall issue no certificate of stock to a shareholder or purchaser of a share until he informs the corporation of his actual place of residence; and shall pay no dividend to a shareholder whose actual place of residence is unknown or has become uncertain, until he informs the corporation thereof.

Certain corporations not to pay dividends, when. § 18, ante.

§ 23. All records of transfers of stock in any corporation created by the sole authority of this commonwealth shall be made and kept therein. The officer of every such corporation whose duty it is to record such transfers shall at the time of his appointment be a resident within the commonwealth; and when he ceases to be such resident, the office shall become vacant.

See §§ 24, 26. Clerk to record transfer. Ch. 106, § 30. Relating to recording. Acts of 1884, ch. 229, and note, at p. 45. Fraudulent transfer. Ch. 11, § 28. Books subject to inspection. Ch. 13, § 49. Same. Ch. 171, § 48.

§ 24. No sale, assignment, or transfer of stock in a corporation shall affect the right of the corporation to pay any dividend due upon the same, or affect the title or rights of an attaching creditor, until it is recorded upon the books of the corporation or a new certificate is issued to the person to whom it has been transferred; but no attachment of such stock as the property of the vendor, made after such sale, assignment, or transfer, shall defeat the title or affect the rights of the vendee, if such record is made or a new certificate issued within ten days after such transfer is made.

See modification of this section by 1884, ch. 229. See § 23, ante, and cross-references.

§ 25. In transfers of stock as collateral security, the debt or duty which such transfer is intended to secure shall be substantially described in the deed or instrument of transfer. A certificate of stock issued to a pledgee or holder of such collateral security shall express on the face of it that the same is so holden; and the name of the pledger shall be stated therein, who alone shall be responsible as a stockholder.

See § 23, ante; ch. 106, § 30, and note to Acts of 1884, ch. 229, at p. 45.

[Where a stockholder transfers his shares to the corporation, by a writing absolute in form, but in fact as collateral security for a note, and surrenders his certificate, delivering at the same time an agreement, that if he failed to pay the note, the bank might sell, etc., and pay his interest and receive his dividends after the note is due, he continues to be a member. *Bank v. Cook*, (4 Pick.) 21 Mass. 405.

Where a stockholder in a manufacturing corporation delivered the certificate, with a blank assignment thereof, to A., as collateral security for a debt, and before the assignment was filled out, or notice thereof given to the corporation, the stock was attached by a creditor of the assignor, who had no notice of the assignment, it was held, that the attaching creditor was entitled to hold the stock against A., although the certificate recited that the stock was transferable only on the books of the company upon surrender of the certificate. *Bank v. Williston*, 138 Mass. 244; *Fisher v. Bank*, (5 Gray) 71 id. 373; *Boyd v. Mills*, (7 Gray) 73 id. 406; *Blanchard v. Dedham*, (12 Gray) 78 id. 213; *Johnson v. Somerville*, (15 Gray) 81 id. 216; *Rock v. Nichols*, (3 Allen) 85 id. 342.]



## Unclaimed dividends; franchises of toll companies — P. S., ch. cv, §§ 26-32.

§ 26. The treasurer, cashier, or other officer who has the lawful custody of the records of transfers of shares, upon the written request of a creditor of the general owner of stock pledged or transferred, shall exhibit to him the record of such transfer; and in case of refusal and of loss to the creditor by reason thereof, the corporation shall be liable for the amount of the loss.

See § 23, ante, and cross-references, and note to ch. 229, Acts of 1884, at p. 45.

§ 27. Each corporation in this commonwealth shall once in every five years publish in some newspaper in the city of Boston, and also in some newspaper, if there is any, in the county where the corporation is established, a list of all dividends and balances which have remained unclaimed for two years or more, with the names of the persons to whose credit the dividends or balances stand; which publication shall be continued in three successive papers.

See ch. 229, Acts of 1884, at p. 45.

[A certificate of shares of the guaranteed stock of a corporation, declaring that dividends at a certain rate are to be paid out of the net earnings, does not constitute the holder a creditor of the corporation, so as to enable him to maintain an action at law to recover the stipulated dividends, although the certificate also declares that the payment of such dividends is guaranteed. *Williston v. R. R.*, (13 Allen) 95 Mass. 400.

An action for dividends declared lies by a stockholder against the corporation, although he has no certificate; but not against the treasurer. *Ellis v. Bridge*, (2 Pick.) 19 Mass. 243; *French v. Fuller*, (23 Pick.) 40 id. 108.

Although a corporation has no lien upon the shares of a member for debts due to it, it may withhold its dividends to pay such a debt. *Sargent v. Ins. Co.*, (8 Pick.) 25 Mass. 90.]

§ 28. Corporations created by any other state, having property in this commonwealth, shall be liable to be sued and their property shall be subject to attachment in like manner as residents of other States having property in this commonwealth are liable to be sued and their property to be attached. The service of the writ shall be made in the manner provided in chapters one hundred and sixty-one and one hundred and sixty-four, with such further service as the court to which the writ is returnable may order.

See § 4, subd. 1, ante, and cross-references. Foreign corporations, powers and duties. See Act of 1884, ch. 330, note, and cross-references.

[A foreign corporation may maintain an action in this commonwealth. *Livery Co. v. Watson*, 10 Mass. 91; *Land Co. v. Ames*, (6 Met.) 47 id. 391; *Johnston v. Ins. Co.*, 132 id. 432.

One foreign corporation cannot maintain a bill in equity here, against another foreign corporation, and a citizen of this commonwealth, to enforce specific performance of a contract for the delivery of bonds and certificates of stock, in payment for work to be performed in the foreign jurisdiction and to enjoin the disposition here of

stock and bonds, alleged to have been received in violation of the plaintiff's right, although the corporation defendant has an office here. *Construction Co. v. R. R.*, 135 Mass. 34.

§ 29. When damages have been assessed in favor of a person, either by an order of county commissioners or by the verdict of a jury, for an injury sustained in his property by the doings of any corporation (except railroads) authorized to receive toll, and the damages remain unpaid for thirty days after the order or verdict, such person may have a warrant of distress against the corporation for the damages assessed, together with interest thereon and his reasonable costs.

See § 4, subd. 1, ante, and cross-references. Warrant of distress. Ch. 215, § 31.

§ 30. The franchise of a corporation authorized to receive toll, and all the rights and privileges thereof, shall be liable to attachment on mesne process; and when such attachment or other service of mesne process is made on a corporation, the officer serving the same shall leave an attested copy of the process and of his return thereon with the clerk, treasurer, or some one of the directors of the corporation, fourteen days at least before the day of the sitting of the court to which the same is returnable.

Levy, how made. Ch. 171, § 30. Proceedings. Ch. 157, § 136.

[Section referred to. *Richardson v. Sibley*, 11 Allen, 71. See also *Commonwealth v. Turnpike Corp.*, 5 Cush. 509.]

§ 31. When a judgment is recovered against a corporation authorized to receive toll, its franchises, with all the rights and privileges thereof so far as relate to the receiving of toll, and also all other corporate property real and personal, may be taken on execution or warrant of distress and sold by public auction.

Mode of sale, etc. §§ 32-40, post. See ch. 171, §§ 30-50.

[See *Comm. v. Turnpike Co.*, 5 Cush. 509.]

§ 32. The officer having such execution or warrant of distress shall, thirty days at least before the day of sale of any franchise or other corporate personal property, give notice of the time and place of sale by posting up a notification thereof in any city or town in which the clerk, treasurer, or any one of the directors dwells, and also by causing an advertisement of the sale, expressing the name of the creditor, the amount of the execution, and the time and place of sale, to be inserted three weeks successively in some newspaper published in any county in which either of said officers of the corporation dwells, if any such there is; the last of which publications shall be at least four days before the day of sale.

## Franchises of toll companies; voluntary dissolution — P. S., ch. cv, §§ 33-41.

See § 31, ante. Sale may be adjourned. § 33, post. Treasurer to give notice. Ch. 106, § 45.

§ 33. The officer who levies such execution or warrant of distress may adjourn the sale for a time not exceeding seven days, and so from time to time until the sale is completed.

See § 32, ante.

§ 34. In the sale of such franchise, the person who satisfies the execution or warrant of distress with all legal fees and expenses thereon, and who agrees to take such franchise for the shortest period of time and to receive during that time all such tolls as the corporation would by law be entitled to demand, shall be considered as the highest bidder.

See § 32, ante.

§ 35. The officer's return on the execution or warrant of distress shall transfer to the purchaser all the privileges and immunities of the corporation, so far as relate to the right of demanding toll; and the officer shall immediately after the sale deliver to the purchaser possession of all the toll-houses and gates belonging to the corporation, in whatever county the same are situated; and the purchaser may thereupon demand and receive to his own use all the toll which accrues within the time limited by the term of his purchase, in the same manner and under the same regulations as the corporation was before authorized to demand and receive the same.

See ch. 171, § 50.

§ 36. A person who has purchased the franchise of a corporation under a sale upon execution or warrant of distress, and the assignee of such person, may recover in an action of tort any penalties imposed by law for an injury to the franchise or for other cause, and which such corporation would have been entitled to recover during the time limited in the purchase of the franchise; and during that time the corporation shall not be entitled to prosecute for such penalties.

See ch. 171, § 50.

§ 37. The corporation whose franchise has been so sold shall in all other respects retain its powers, be bound to the discharge of its duties, and liable to the same penalties and forfeitures as before the sale.

§ 38. The corporation may at any time within three months from the time of sale redeem the franchise by paying or tendering to the purchaser the sum that he paid, with twelve per cent. interest thereon, but without any allowance for the toll which he has received; and upon such payment or tender the franchise and all the rights and privi-

leges thereof shall revert and belong to the corporation as if no such sale had been made.

§ 39. All proceedings respecting attachments and the levy of executions or warrants of distress may be had in any county in which the creditor, president, treasurer, clerk, or a director of the corporation, resides.

See § 4, subd. 1, ante, and cross-references.

§ 40. When a majority in number or interest of the members of a corporation desire to close its concerns, they may apply by petition to the supreme judicial court, setting forth in substance the grounds of their application, and the court, after due notice to all parties interested and a hearing, may for reasonable cause decree a dissolution of the corporation. A corporation so dissolved shall be deemed and held extinct in all respects as if its corporate existence had expired by its own limitation.

See §§ 41-45, post. Corporation may be dissolved by general court. Ch. 106, § 5. Failure to make annual statement. Ch. 106, § 55. Proceedings on quo warranto. Ch. 186, §§ 17 et seq.

[Surrender by a corporation of its franchises to and the acceptance thereof by the government amount to a dissolution. *Stone v. Farmingham*, 109 Mass. 303. See also *Revere v. Copper Co.*, (15 Pick.) 32 id. 351; *Glass Co. v. Langdon*, (24 Pick.) 41 id. 49; *Folger v. Ins. Co.*, 99 id. 267. And a subsequent mention of the former corporation in a statute does not revive it. *Thornton v. Ry.*, 123 Mass. 32.

Mere non-user of franchises, and failure to elect officers, will not dissolve the corporation without judicial or legislative action. *Russell v. McLellan*, (14 Pick.) 31 Mass. 63; *Oakes v. Hill*, (14 Pick.) id. 442; *Lynd v. Hill*, (14 Pick.) id. 447, note; *Glass Co. v. Langdon*, (24 Pick.) 41 id. 49; *Knowlton v. Ackley*, (8 Cush.) 62 id. 93.

And notice to the executive department by the corporation, that it claims no further interest in its act of incorporation, is not a dissolution. *Revere v. Copper Co.*, (15 Pick.) 32 Mass. 351.

So as to insolvency and a general assignment to trustees to pay debts. *Glass Co. v. Langdon*, (24 Pick.) 41 Mass. 49.

Under above section it is not reasonable cause for the dissolution of a telegraph company, upon a petition of a majority, that it has fraudulently leased its line to another company, if, after filing the petition, the lease is annulled by both companies. In *re Tel. Co.*, 119 Mass. 447. Nor is it reasonable cause for dissolution of a manufacturing company that one person owns the majority of the stock, and for many years has controlled the elections and managed the company, without regard to the wishes and interests of the petitioners, and so as to result in a loss. *Pratt v. Jewett*, (9 Gray) 75 Mass. 34.]

§ 41. Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for the term of three years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it, and of enabling it gradually to



## Appointment and powers of receivers — P. S., ch. cv, §§ 42-45.

settle and close its concerns, to dispose of and convey its property, and to divide its capital stock, but not for the purpose of continuing the business for which it was established.

See § 4, subd. 1, ante, and cross-references.

[Section construed. *Thornton v. Ry. Co.*, 123 Mass. 32.]

§ 42. (As amended 1884, ch. 203.) When the charter of a corporation expires or is annulled, or the corporation is dissolved as provided in section forty, or its corporate existence for other purposes is terminated in any other manner, the supreme judicial court, on application of a creditor, stockholder or member, may appoint one or more persons to be receivers to take charge of its estate and effects, and to collect the debts and property due and belonging to it; with power to prosecute and defend suits in its name or otherwise, to appoint agents under them, and to do all other acts which might be done by such corporation, if in being, that are necessary for the final settlement of its unfinished business. The powers of such receivers may be continued as long as the court deems necessary for said purposes.

Receivers to pay debts, etc. § 44, post.

§ 43. The court shall have jurisdiction in equity of the application and of all questions arising in the proceedings thereon; and may make such orders, injunctions, and decrees therein as justice and equity require.

§ 44. The receivers shall pay all debts due from the corporation, if the funds in their hands are sufficient therefor; and if not, they shall distribute the same ratably among the creditors who prove their debts in the manner directed by any order or decree of the court for that purpose. If there is a balance remaining after the payment of the debts, the receivers shall distribute and pay it to and among those who are justly entitled thereto as having been stockholders or members of the corporation, or their legal representatives.

See § 42, ante.

§ 45. When a corporation is dissolved by the supreme judicial court, the clerk of the courts for the county in which the decree or order for dissolution is made shall forthwith make return thereof to the secretary of the commonwealth, giving the name of the corporation dissolved, and the date upon which such order or decree was made.

## CHAPTER CVI.

## Of Manufacturing and Other Corporations.

- Sec. 1. Commissioner to be sworn; his duties, etc.  
 2. Abstracts of certificate to be submitted to general court.  
 3. What corporations shall be governed by this chapter.

- Sec. 4. Certain manufacturing corporations may become subject to this chapter by recording certificate, etc.  
 5. Charters may be revoked, corporations dissolved, and provisions of this chapter amended, etc., by the general court.  
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- Sec. 53. Cotton and woolen companies may manufacture silk, etc.  
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#### COMMISSIONER OF CORPORATIONS.

Section 1. The commissioner of corporations shall be sworn to the faithful discharge of his duties. He shall examine the certificates submitted to him under the provisions of these statutes, and make suitable indorsements upon such as conform to the requirements of law. He shall keep a record of the names of corporations submitting certificates to his inspection, with the date of inspection and of his certificates when given, and the result in brief of his inspection. He shall bring instances of neglect or of omission to comply with the provisions of this chapter on the part of corporations to the knowledge of the attorney-general, for the enforcement of the penalties therefor. He shall not receive any fees for the performance of his duties.

See ch. 105, § 1. Contents of certificate submitted to commissioner. § 21, post. Same as to corporation previously organized. § 22, post. Certificate examined by commissioner, when. § 59, post. Attorney-general. Ch. 186, § 22. Commissioner may change name. Acts of 1891, ch. 360. See Acts of 1884, § 330.

§ 2. The secretary of the commonwealth shall annually prepare, cause to be printed, and on the first Wednesday of January submit to the general court, a true abstract from the certificates required by this chapter to be deposited with him.

See § 21, post.

#### CORPORATIONS GOVERNED BY THIS CHAPTER.

§ 3. All corporations organized or chartered under or subject to the provisions of this chapter, of chapter two hundred and twenty-four of the statutes of the year eighteen hundred and seventy, of the statutes in amendment thereof and in addition thereto, of chapter one hundred and eighty-seven or two hundred and ninety of the statutes of the year eighteen hundred and sixty-six, of chapter sixty or sixty-one of the General Statutes, of chapter one hundred and thirty-three of the statutes of the year eighteen hundred and fifty-one, or of chapter thirty-eight of the Revised Statutes, those established by special charters subsequently to the twenty-third day of February in the year eighteen hundred and thirty for the purpose of carrying on any kind of manufacture, and those which in compliance with law have voted to adopt the provisions of chapter fifty-three of the statutes of the political year eighteen hundred and twenty-nine, of chapter thirty-eight of the Revised Statutes, of chapter sixty of the General Statutes, of chapter two hundred and twenty-four of the statutes of the year eighteen hundred and seventy, and have performed the things in that behalf prescribed in the several statutes so adopted, and those which shall comply with the following section and the respective officers and stockholders of all such corporations, may exercise the powers, and shall be governed by the provisions, and be subject to the liabilities, prescribed in this chapter.

Any corporations governed by §§ 3 and 4 may alter its business under § 51. See Stat. 1885, ch. 310.

See ch. 105, § 1. Corporation subject to this chapter. §§ 4-15. Acceptance of acts. Acts of 1883, ch. 100.

[A corporation to refine, and prepare for use, oil, coal, etc., is a manufacturing corporation. *Hawes v. Petroleum Co.*, 101 Mass. 385.]

§ 4. If any manufacturing corporation chartered before the twenty-third day of February in the year eighteen hundred and thirty, at a legal meeting called for the purpose, adopts this chapter, and causes to be recorded in the registry of deeds, in the county or district where such corporation is established, a certificate signed by its president, treasurer, clerk, and a majority of its directors, stating the amount of its capital actually paid in, and, if any part thereof has been divided or withdrawn, the amount so divided and withdrawn, and also the amount of its debts and credits, and an estimate of the value of its real and personal estate for the purpose of carrying on its business at the time of making such certificate; and if such officers make oath that they have carefully examined the records and accounts of said corporations, and faith-



Revocation; corporate purposes and limit of capital — P. S., ch. cvi, §§ 5-12.

fully estimated the value of the property and funds thereof, and that said certificate by them signed is true according to their best knowledge and belief; then such corporation with its members and officers shall be entitled to all the rights, privileges, and immunities, and be subject to all the liabilities, duties, and restrictions, set forth in this chapter applicable to such corporations; and no stockholder therein shall be liable for any debts of the corporation contracted after the recording of such certificate, except for the causes and in the manner hereinafter provided.

See § 3, ante.

#### RIGHT OF REVOCATION, AMENDMENT AND REPEAL.

§ 5. The charter of any corporation which is subject to the provisions of this chapter may be revoked by the general court for any cause which it deems sufficient, and the provisions of this chapter may be amended or repealed so as to affect existing corporations at the pleasure of the general court, and it may, by special act, annul or dissolve any corporation which is subject to said provisions.

Notice to be given. Ch. 2, § 5. Charter subject to alteration. Ch. 105, § 3. Corporation may be dissolved. Ch. 105, § 40.

#### FORMATION OF CORPORATIONS.

##### *Purposes, Number of Associates, and Limits of Capital Stock.*

§ 6. Any such number of persons as is hereinafter provided, who associate themselves together by such an agreement in writing as is hereinafter described, with the intention of forming a corporation for any purpose hereinafter specified, upon complying with the provisions of section twenty-one, shall be and remain a corporation.

See ch. 2, § 7.

[The acceptance of a charter by the persons named therein, and their organization, pursuant thereto, create them a corporation, and such corporation holds the franchise by which it is authorized to receive and enforce subscriptions to its capital stock, but until something further is done, it is not the corporation contemplated by the charter, with the capital stock specified therein. *Land Co. v. Holley*, 129 Mass. 540. See also under the general act, *Hawes v. Anglo-Saxon Co.*, 101 id. 385.]

§ 7. For the purpose of carrying on any mechanical, mining, or manufacturing business, except that of distilling or manufacturing intoxicating liquors, three or more persons may associate themselves, with a capital of not less than five thousand nor more than one million dollars.

Par value of the stock shall be what. Acts 1894, ch. 500.

See ch. 105, § 7. Organization of corporation. §§ 16 et seq., post.

[Section applied. *Howes v. Petroleum Co.*, 101 Mass. 385.]

§ 8. For the purpose of cutting, storing, and selling ice, or of carrying on any agricultural, horticultural, or quarrying business, or of printing and publishing newspapers, periodicals, books, or engravings, three or more persons may associate themselves, with a capital of not less than five thousand nor more than five hundred thousand dollars.

Par value of the stock shall be what. Acts 1894, ch. 500.

Organization. §§ 16 et seq., post.

[See *Howes v. Petroleum Co.*, 101 Mass. 385.]

§ 9. For the purpose of co-operation in carrying on any business authorized in the two preceding sections, and of co-operative trade, seven or more persons may associate themselves, with a capital of not less than one thousand nor more than one hundred thousand dollars.

See § 21, post.

§ 10. For the purpose of opening outlets, canals, or ditches for the introduction and propagation of herrings and alewives, three or more persons may associate themselves, with a capital of not less than one thousand nor more than five thousand dollars.

See § 21, post.

[Section 11. For the purpose of making and selling gas for light [for heating, cooking, chemical and mechanical purposes, Stat. 1885, chap. 240], or for the purpose of generating and furnishing steam or hot water for heating, cooking and mechanical power [or for the purpose of generating and furnishing hydrostatic pressure for mechanical power] in any city or town, or for [either or both] [any two or more, see 1891, chap. 189] of said purposes, ten or more persons may associate themselves, with a capital of not less than five thousand nor more than five hundred thousand dollars.]

Section 11 is amended by Stat. 1893, ch. 397, to read as follows:

§ 11. For the purpose of making and selling gas for light, or for the purpose of generating and furnishing steam or hot water for heating, cooking, and mechanical power, or for the purpose of generating and furnishing hydrostatic or pneumatic pressure for mechanical power, in any city or town, or for any two or more of said purposes, ten or more persons may associate themselves, with a capital of not less than five thousand nor more than five hundred thousand dollars.

[For further provisions relating to gas companies, see Stat. 1885, chs. 240, 314; 1886, ch. 346; 1887, ch. 350, 1888, chs. 350, 425; 1894, ch. 350.]

See § 21, post.

§ 12. For the purpose of transacting the business of a common carrier of persons or property, three or more persons may associate themselves, with a capital of not less than five thousand nor more than one million dollars, with power to undertake for the carriage of persons or property beyond

the limits of this commonwealth, but not to purchase or operate railroads, canals, or ferries.

See § 21, post.

§ 13. (As amended March 9, 1888.) For the purpose of erecting and maintaining a hotel, public hall, or building for manufacturing or mechanical purposes, three or more persons may associate themselves, with a capital of not less than five thousand, nor more than five hundred thousand dollars, but with no power to engage in the business of keeping a hotel.

Par value of the stock shall be what. Acts of 1894, ch. 500.

See § 21, post.

§ 14. For the purpose of carrying on any lawful business not mentioned in the seven preceding sections, except buying and selling real estate, banking, insurance, and any other business the formation of corporations for which is otherwise regulated by these statutes, three or more persons may associate themselves, with a capital of not less than one thousand nor more than one million dollars.

[By Stat. of 1884, ch. 180, and 1887, ch. 214, §§ 62, 63 and 64, corporations may be formed to examine and guarantee titles to real estate. See 1887, ch. 214, §§ 63, 64.]

[By Stat. of 1885, ch. 265, corporations may be formed for cremating the bodies of the dead, etc.]

Par value of the shares shall be what. Acts 1894, ch. 500.

See § 21, post.

§ 15. Any or all of the creditors of any corporation existing by authority of this commonwealth and organized or chartered for any purpose designated in this chapter, which has been adjudged bankrupt or insolvent or has made an assignment of its property for the benefit of its creditors, or any or all persons for whose benefit such corporation has assigned the whole or any part of its property, and such other person or persons in either case as they may select, may associate themselves for the purpose of forming a corporation to acquire the whole or any part of the property of such bankrupt or insolvent corporation, or of that assigned for the benefit of its creditors, and to carry on the business previously authorized to be carried on by said bankrupt or insolvent corporation.

See § 21, post.

#### *Agreement, Name, and Organization.*

§ 16. Such agreement shall set forth the fact that the subscribers thereto associate themselves together with the intention of forming a corporation, the corporate name assumed, the purpose for which it is formed, the town or city, which shall be in this

commonwealth, in which it is established or located, the amount of its capital stock, and the par value and number of its shares.

Corporate name. § 17, post. Par value of shares. Ch. 105, § 16. Capital stock fixed at first meeting. § 32, post.

[See *Bird v. Daggett*, 97 Mass. 494.]

§ 17. Any corporate name may be assumed [see Stat. 1891, chap. 257, for new provisions as to corporate name] which indicates that it is a corporation, and which is not in use by an existing corporation or company; and the name assumed shall be changed only by act of the general court. [But see Stat. 1891, chap. 360.] If organized for the purposes mentioned in section nine or ten, the words "co-operative," or "fishing," respectively, shall form part of the name.

Agreement to contain name. § 16, ante. Certain names prohibited. Acts of 1891, ch. 257. Commissioner authorized to change name. Acts of 1891, ch. 360. May sue in corporate name. Ch. 105, § 4.

§ 18. The first meeting shall be called by a notice signed by one or more of the subscribers to such agreement, stating the time, place, and purpose of the meeting, a copy of which notice shall, seven days at least before the day appointed for the meeting, be given to each subscriber, or left at his usual place of business or place of residence, or deposited in the post-office, post-paid, and addressed to him at his usual place of business or of residence. And whoever gives such notices shall make affidavit of his doings, which shall be recorded in the records of the corporation.

First meeting, how called. Ch. 105, §§ 9, 10.

[Where one only of three persons named as incorporators in the charter signed the call for the first meeting, and the others refused to sign it, and did not attend or otherwise participate in the organization, but made no objection to the proceedings or any claim to exercise corporate powers, the organization is sufficient, except as against the commonwealth. *Walworth v. Brackett*, 98 Mass. 98.]

§ 19. Until the organization is completed, the subscribers to the agreement of association shall hold the franchise; and if it is not otherwise provided in such agreement, each subscriber may take an equal number of the shares in the capital stock upon paying the assessments thereon as called for by the corporation, if he elects to take such shares at the first meeting. All shares not so taken shall be disposed of as the corporation determines.

See ch. 105, § 9.

[See *Hawes v. Petroleum Co.*, 101 Mass. 385.]

§ 20. At such first meeting, including any necessary or reasonable adjournment, an organization shall be effected by the choice



by ballot of a temporary clerk, who shall be sworn, and by the adoption of by-laws, and the election, in the manner provided in section twenty-four, of directors, treasurer, clerk, and such other officers as the by-laws may provide; but at such first meeting no person shall be eligible as a director who has not subscribed the agreement of association. The temporary clerk shall make and attest a record of the proceedings until the clerk has been chosen and sworn, including a record of such choice and qualification.

Power to elect directors. Ch. 105, § 4, subd. 3. Organization to take place within two years. Ch. 105, § 8. Executors may vote. Ch. 105, § 13. Capital stock fixed at first meeting. § 32, post. Quorum. § 28, post.

[It is not a defense to an action by a mutual insurance company that it met and chose officers before its charter went into effect, if those persons subsequently acted as such officers with the assent of the corporators. *Ins. Co. v. Jesser*, (5 Allen) 87 Mass. 446.]

The officers chosen at the first meeting may sign the certificate. *Boston Co. v. Moring*, (15 Gray) 81 Mass. 211.

The giving of the treasurer's bond is not a condition precedent to organization, or the right to sue. *Id.*

A contract by which a shareholder in a corporation agrees to procure the appointment or election of the purchaser as an officer of the corporation is void as against public policy. *Guernsey v. Cook*, 120 Mass. 501; *Woodruff v. Wentworth*, 123 id. 309.]

§ 21. The president, treasurer, and a majority of the directors, shall forthwith make, sign, and swear to a certificate setting forth a true copy of the agreement of association with the names of the subscribers thereto, the date of the first meeting, and the successive adjournments thereof, if any, and shall submit such certificate and also the records of the corporation to the commissioner of corporations, who shall examine the same, and who may require such other evidence as to the facts of the case as he may judge necessary. The commissioner, if it appears that the requirements of the preceding sections preliminary to the establishment of the corporation have been complied with, shall certify that fact and his approval of the certificate by indorsement thereon. Such certificate shall thereupon be filed by said officers in the office of the secretary of the commonwealth, who, upon payment of the fee hereinafter provided, shall cause the same with the indorsement thereon to be recorded, and shall thereupon issue a certificate in the following form:—

#### COMMONWEALTH OF MASSACHUSETTS.

Be it known that whereas [here the names of the subscribers to the agreement of association shall be inserted] have associated themselves with the intention of forming a corporation under the name of [here the name of the corporation shall be inserted],

for the purpose [here the purpose declared in the agreement of association shall be inserted], with a capital of [here the amount of capital fixed in the agreement of association shall be inserted], and have complied with the provisions of the statutes of this commonwealth in such case made and provided, as appears from the certificate of the president, treasurer, and directors of said corporation, duly approved by the commissioner of corporations and recorded in this office: Now, therefore, I [here the name of the secretary shall be inserted], secretary of the commonwealth of Massachusetts, do hereby certify that said [here the names of the subscribers to the agreement of association shall be inserted], their associates and successors, are legally organized and established as and are hereby made an existing corporation under the name of [here the name of the corporation shall be inserted], with the powers, rights, and privileges, and subject to the limitations, duties, and restrictions, which by law appertain thereto.

Witness my official signature hereunto subscribed, and the seal of the commonwealth of Massachusetts hereunto affixed, this ..... day of ..... in the year ..... [In these blanks the day, month, and year of execution of the certificate shall be inserted.]

The secretary shall sign the same and cause the seal of the commonwealth to be thereto affixed, and such certificate shall have the force and effect of a special charter, and shall be conclusive evidence of the existence of such corporation. He shall also cause a record of such certificate to be made, and a certified copy of such record may be given in evidence with like effect as the original certificate.

Duties of commissioner. § 1, ante. Fishing association to file. § 58, post. Corporation previously organized to file certificate. § 22, post. Fees for filing and recording. § 84, post. Index of certificates. Acts of 1893, ch. 32. Same. Resolves of 1894, ch. 31.

[As to the sufficiency of the specification of the objects of the corporation, under the statute of 1851, see *Bird v. Daggett*, 97 Mass. 494.]

The certificate required by the statutes of 1851 may be filed before any of the capital stock is paid in. *Boston Co. v. Moring*, (15 G.) 81 Mass. 211.

A corporation carrying on business held presumed to be correctly organized. *Packard v. Old Colony R. Co.*, 168 Mass. 92; s. c., 46 N. E. Rep. 433.]

§ 22. Any corporation organized under the provisions of chapter one hundred and thirty-three of the statutes of the year eighteen hundred and fifty-one, chapter sixty-one of the General Statutes, or chapter one hundred and eighty-seven or two hundred and ninety of the statutes of the year eighteen hundred and sixty-six, which at a meeting of its stockholders regularly notified for that purpose decides to comply

Certificate of corporations previously organized; officers — P. S., ch. cvi, §§ 22, 23.

with the provisions of this section, may submit to the commissioner of corporations a certificate signed and sworn to by its president, treasurer, clerk, and a majority of its directors, setting forth a copy of its articles of agreement, with the names of the subscribers thereto, and a copy of the vote aforesaid, and produce evidence of its regular organization according to law or of confirmatory action under the provisions of sections seventy-nine and eighty of this chapter, of section sixty-six of chapter two hundred and twenty-four of the statutes of the year eighteen hundred and seventy, of section four of chapter sixty-one of the General Statutes, or of section three of chapter four hundred and seventy-eight of the statutes of the year eighteen hundred and fifty-five.

The commissioner shall examine such certificate and evidence of organization; and if it appears that the provisions of law have been complied with, he shall certify that fact and his approval thereof by indorsement thereon. The secretary of the commonwealth shall, upon the same being deposited in his office, and upon payment of the fee hereinafter provided, cause the same, with the indorsement thereon, to be recorded, and shall issue a certificate in the following form:—

#### COMMONWEALTH OF MASSACHUSETTS.

Be it known that whereas [here the names of the original subscribers shall be inserted] have formerly associated themselves with the intention of forming a corporation under the name of [here the name of the corporation shall be inserted], for the purpose [here the purpose declared in the articles of agreement shall be inserted], under the provisions of [here the designation of the statute under the provisions of which organization was effected shall be inserted], with a capital of [here the amount of the capital stock as it stands fixed by the corporation at the date of the certificate shall be inserted], and the provisions of the statutes of this commonwealth in such case made and provided have been complied with, as appears from the certificate of the president, treasurer, and directors of said corporation, duly approved by the commissioner of corporations and recorded in this office: Now, therefore, I [here the name of the secretary shall be inserted], secretary of the commonwealth of Massachusetts, do hereby certify that said [here the name of the corporation shall be inserted] is legally organized and established as an existing corporation, with the powers, rights, and privileges, and subject to the limitations, duties, and restrictions, which by law appertain thereto.

Witness my official signature hereunto subscribed, and the seal of the commonwealth of Massachusetts hereunto affixed, this ..... day of ..... in the

year ..... [In these blanks the day, month, and year of execution of the certificate shall be inserted.]

The secretary shall sign the same and cause the seal of the commonwealth to be thereto affixed, and such certificate shall be conclusive evidence of the existence of such corporation at the date of such certificate. He shall also cause a record of such certificate to be made, and a certified copy of such record may be given in evidence with like effect as the original certificate.

See ch. 105, § 2. Duties of commissioner. § 1, ante. Certificate of organization. § 21, ante. Corporation may become subject to this chapter, how. § 4, ante. Not to commence business until certificate is filed. § 46, post. Fee for filing. § 84, post.

#### POWERS AND LIABILITIES.

##### *By-laws, Officers, etc.*

§ 23. The business of every corporation which is subject to this chapter shall be managed and conducted by a president, board of directors, clerk, treasurer, and such other officers and agents as the corporation authorizes for that purpose. But no conveyance or mortgage of its real estate, or lease thereof for more than one year, shall be made, unless authorized by a vote of the stockholders at a meeting called for the purpose.

Power to elect directors, etc. Ch. 105, § 4, subd. 3. To convey real estate. Ch. 105, § 6. Officer acting fraudulently. Ch. 203, § 62.

[One or more stockholders cannot maintain an action at law against the directors for mismanagement, etc. *Smith v. Hurd*, (12 Met.) 53 Mass. 371.

But an action lies in equity, by one or more stockholders, in behalf of themselves and the others, against the corporation and the directors, and, if the case requires, against third persons, for fraud, conspiracy, neglect, or other misconduct, whereby the value of their stock has been injured; but as against third persons, the bill must show that an effort has been made to procure the corporation to bring such an action, or that such an effort would be useless; and for that purpose it is not enough to allege that the majority of the directors are acting in concert with those charged with the fraud. *Brewer v. Theatre*, 104 Mass. 378. See also *Abbott v. Merriam*, (8 Cush.) 62 id. 588; *Peabody v. Flint*, (6 Allen) 88 id. 52; *Ward v. Ry.*, 108 id. 332.

But not for acts sanctioned by the legislature and a majority of the stockholders. *Durfee v. R. R.*, (5 Allen) 87 Mass. 230.

Where a corporation brings a suit in equity to set aside its own acts, for the fraud or other misconduct of its officers, the right of action rests upon equity of the stockholders. *R. R. v. Credit Moblier*, 135 Mass. 367.

Where part only of the directors attend the meeting of the board and transact business thereat, the presumption is that the absent directors had notice. *Sargent v. Webster*, (13 Met.) 54 Mass. 497.

It is not necessary to the regularity of the proceedings that the president should attend. *Id.*

A majority constitute a quorum, and a majority of the quorum may act. *Id.*

Directors are necessarily, as matter of law, chargeable with knowledge of that which they might have learned by the exercise of diligence. The question is ordinarily one of fact. *Murray v. Lumber Co.*, 143 Mass. 250; s. c., 9 N. E. Rep. 634.



## Officers and directors; powers, etc.—P. S., ch. cvi, § 23.

A corporation, intending in good faith, may pay its directors money borrowed from them in the ordinary course of business without rendering them liable to creditors of the corporation. *Holt v. Bennett*, 146 Mass. 437; 16 N. E. Rep. 5.

The courts of this commonwealth will recognize the validity of a mortgage of corporate lands here, where the corporation is a foreign one, and, under the laws of the State of its incorporation, has general powers to make contracts and purchase and convey real estate. Nor is it a reason for declaring the mortgage invalid, that, though authorized at a directors' meeting in this commonwealth, it was not authorized by a stockholder's vote at a specially-called meeting. *Pub. St.*, ch. 106, § 23, not applying to foreign corporations. *Saltmarsh v. Spaulding*, 147 Mass. 224; s. c., 17 N. E. Rep. 316.

Redress, in case of assumed and illegal exercise of office, must be obtained by quo warranto or mandamus; and where, upon a bill in equity, the court determines upon the right of certain trustees, under a mortgage of a corporation, to vote at an election for directors, and certificates of indebtedness held by them for a sinking fund, it will not go further and determine who is elected, if it is necessary to pass upon the validity of other votes. *Ins. Co. v. Phillips*, 141 Mass. 535; s. c., 6 N. E. Rep. 534.

The directors may authorize an officer to raise money for his own use on the company's note, as an advance or payment of wages, and such an authority will include a bill of exchange. *Tripp v. Swanzy Co.*, (13 Pick.) 30 Mass. 291.

The directors may, in behalf of the corporation, borrow money, issue bonds and mortgage, purchase or sell real or personal property, within the power of the corporation so to do, unless otherwise restricted by the charter or by-laws. *Hendee v. Pinkerton*, (14 Allen) 96 Mass. 381; *R. R. v. R. R.*, 111 id. 125.

A contract between a corporation and its directors is not void, but voidable at the election of the corporation, and the right to avoid it may be waived; or it may be ratified by the stockholders, with knowledge of the fact, although in ignorance of the legal effect of such facts. *Kelley v. R. R.*, 141 Mass. 496; s. c., 6 N. E. Rep. 745.

Where the corporation is insolvent, the directors may sell all its property to a new corporation, and take shares in payment. *Treadwell v. Salisbury Co.*, (7 Gray) 73 Mass. 393. Or convey all the property to one who is liable as indorser, or to a creditor, on condition that he shall apply the proceeds to his demand, and pay over the balance. *Sargent v. Webster*, (13 Met.) 54 Mass. 497.

The trustees of a monument company have power to bind the company by a promissory note and to create one debt to pay another. *Hayward v. Soc.*, (21 Pick.) 38 Mass. 270.

The directors may ratify an unauthorized act of an officer; and evidence of acquiescence and recognition thereof by them is sufficient to go to the jury, without any substantive act, upon the question of ratification. *Parish v. R. R.*, 141 Mass. 500; s. c., 6 N. E. Rep. 749.

A bill in equity lies in favor of a creditor of a mutual insurance company, against the president and directors, to compel them to pay a loss, for which purpose they had funds, which they had fraudulently applied otherwise, but the company is a necessary party to such a bill. *Lyman v. Bonney*, 101 Mass. 562.

A bill lies by a judgment creditor, against the directors of a company, for gross negligence or other misconduct, whereby his debt was lost; but it cannot be maintained if they acted in good faith and legally, although with want of correct judgment. *Lyman v. Bonney*, 118 Mass. 222.

Where the directors of a ferry company bought a steamboat from another company, of which they were directors and the only stockholders, and resold it to the ferry company at an advance, the profits may be recovered from them in equity by the company, or a receiver thereof; and they cannot charge, as part of the costs, their expenses in obtaining the charter, etc., of the other company. *Parker v. Nickerson*, 112 Mass. 195.

When contract between corporation and its directors not invalid. *Warren v. Para Rubber Co.*, 166 Mass. 97; s. c., 44 N. E. Rep. 112.

A lease by a corporation of its property to its directors held not fraudulent. *Nye v. Storer*, 168 Mass. 53; s. c., 46 N. E. Rep. 402.

**President.**—The president alone may be authorized by the directors to sign for the company, although the charter provides that contracts may be signed by the president and secretary; and a formal vote is not necessary for that purpose. *Topping v. Bickford*, (4 Allen) 86 Mass. 120.

A formal vote is not necessary to authorize the president to execute a mortgage for the company; the knowledge and concurrence of the directors, or their subsequent and long-continued acquiescence, suffices. *Sherman v. Fitch*, 98 Mass. 59. See also *Emerson v. Providence Co.*, 12 id. 237; *Melledge v. Boston Co.*, (5 Cush.) 59 id. 158; *Lester v. Webb*, (1 Allen) 83 id. 34. So as to a contract for machinery, where the machinery had been received and used by the company. *Bank v. Silk Co.*, (3 Met.) 44 Mass. 282.

In the absence of an express or implied general authority, the discharge of record by the president of two mortgages to the corporation, of which the directors had authorized him to discharge one only is void as to the other. *Smith v. Smith*, 117 Mass. 72.

The president of a manufacturing company has no authority by virtue of his office to commence an action for the corporation. *Manf. Co. v. Marsh*, (1 Cush.) 55 Mass. 507.

A mortgage of all the personal property of a manufacturing corporation, given by the president and treasurer, to secure a pre-existing debt, without authority from the directors, is void, although the president was also the general manager, and owned all but two shares of the stock. *England v. Dearborn*, 141 Mass. 590; s. c., 6 N. E. Rep. 837.

Where the president of a corporation claims the salary allowed to his predecessor, the claim may be controverted by evidence that such was not the understanding and intention of the parties. *Ins. Co. v. Crane*, (6 Met.) 47 Mass. 64.

For evidence warranting a finding of an implied contract between a corporation and its president that he should be paid for valuable services extending over a term of years, see *Bartlett v. River Co.*, 151 Mass. 433; s. c., 24 N. E. Rep. 780.

Where the president was re-elected after the commencement of the year for which his salary had been fixed, no formal confirmation thereof was necessary. *Kimball v. Grate Co.*, 168 Mass. 32; s. c., 46 N. E. Rep. 432.

A vote of directors rescinding a vote giving a salary to its president for a year held nugatory. *Id.*

Authority of president to discharge mortgage for corporation held sufficiently shown by the evidence. *Swasey v. Emerson*, 168 Mass. 118; s. c., 46 N. E. Rep. 426.

**Treasurer.**—In an action against a manufacturing corporation on a bill of exchange accepted by A., as treasurer, upon the testimony of a witness that he had seen the records and that it appears therein that A. was chosen treasurer, the jury may infer that he was duly elected and authorized to accept the bill. *Bank v. Silk Co.*, (3 Met.) 44 Mass. 282.

The treasurer of a corporation is not liable to a stockholder, for the dividends declared on his shares, although he has funds to pay them. *French v. Fuller*, (23 Pick.) 40 Mass. 108.

Where the treasurer is suffered by the directors to draw and accept drafts, indorse notes and the like, the corporation will be bound by his acts in so doing. *Lester v. Webb*, (1 Allen) 83 Mass. 34.

The treasurer of a savings bank is indictable for embezzlement of the bank's property. *Comm. v. Pratt*, 137 Mass. 98.

And has no authority, by virtue of his office, to transfer to a purchaser a promissory note or mortgage of the bank. *Holden v. Upton*, 134 Mass. 177; *Holden v. Phelps*, 125 id. 61. And where he has express authority to transfer the same, he has no power to bind the bank by a guaranty. *Comm. v. Bank*, 137 Mass. 431.

The fact that by the assent and under the direction of the investment committee he had assigned other mortgages relating to other estates, is not, even if the fact was known to the assignee, sufficient to give him a general authority to assign mortgages. *Holden v. Phelps*, 135 Mass. 61.

Nor has he authority to release a debt of the bank, upon receiving a dividend from the debtor. *Sav. Inst. v. Slack*, (6 Cush.) 60 Mass. 408.

Nor will the subsequent receipt of dividends to the treasurer's successor, indorsed upon the note and entered in the books or the subsequent examination of the treasurer's accounts, books and papers, and the passing thereof as correct by a committee, amount to a ratification of the release. *Id.*

Nor has he authority to bind the bank by indorsing its name upon a promissory note, although the directors have voted to sell notes held by the bank. *Bradlee v. Bank*, 127 Mass. 107. And a provision of the by-laws that the treasurer shall draw all necessary papers, etc., and that "his signature shall be binding upon the corporation," does not confer upon him such a power. *Id.*

Nor does such a provision bind the bank, where he fraudulently borrowed money on his own note pretending that it was for the bank, and gave as collateral security deposit books, originally genuine, but containing false entries, or assignments procured by fraud. *Comm. v. Bank*, 133 Mass. 16.

It was no part of the treasurer's official duty to state to a third person the condition of a depositor's account so as to enable the former safely to take an assignment thereof. *Comm. v. Bank*, 137 Mass. 431.

Where the trustees voted that the treasurer of a savings bank should have authority to discharge and release mortgages, and he fraudulently interpolated also the word "assign" it was held that the bank was concluded by an assignment of a mortgage, made by him to a person, acting in good faith, to whom the record was shown, the treasurer having embezzled the proceeds. *Holden v. Phelps*, 141 Mass. 456; s. c., 5 N. E. Rep. 815.

A treasurer of a savings bank may direct a suit to be brought on an overdue note; and where, after judgment, land taken on execution is set off to the bank, and the attorney for the bank, under the direction of the treasurer and a trustee having charge of the matter, accepts seisin, and brings a writ of entry, it is no objection that they were not authorized by a previous vote of the trustees. *Bank v. Keary*, 128 Mass. 298.

Where the treasurer of a savings bank, who is also a trustee and a member of the finance committee, is intrusted by the bank with the sale of its property, he is bound to the diligence and good faith of an agent; and he cannot escape liability to the bank for a sale at the minimum price paid, but below the best price, by claiming that he acted as trustee. *Bank v. Simons*, 133 Mass. 415. In such case, where the property sold was the right to take stock in a national bank, the damages are the difference between the sum for which the right was sold and the cash value thereof, not including dividends since paid. *Id.*

Where a person, who has a claim against a corporation, is induced by the false and fraudulent representations of its treasurer, to refrain from taking out an attachment against the corporation, and the property of the corporation is subsequently attached for the debt of another creditor, and sold on execution, an action of tort for such fraudulent representations will not lie against the treasurer, although the declaration alleges a conspiracy between him and the other creditor to defraud the plaintiff. *Bradley v. Fuller*, 118 Mass. 239.

The treasurer of a manufacturing corporation has no authority to release the corporation's claim for a loss, under a policy of insurance obtained by him. *Carver Co. v. Ins. Co.*, (6 Gray) 72 Mass. 214.

The treasurer and the general agent of a manufacturing or trading corporation have power unitedly to borrow money for the corporation, and to give its notes, and pledge its personal property therefor; although the by-laws give them specific powers, which do not include such acts. *Fay v. Noble*, (12 Cush.) 66 Mass. 1.

Where the treasurer is authorized to give the corporation's note in payment of a debt, he may do so after the lapse of several years, the statute of limitations not having run. *Hayward v. Soc.*, (21 Pick.) 38 Mass. 270. And the original minutes of the proceedings of the trustees, kept by one of their number who has since died, are competent evidence of such authority. *Id.*

The treasurer of a corporation, who refuses to disclose the amount for which he has sold a bond, is liable for its full market value; and the receivers of the corporation are not concluded by the acceptance by the directors of his fictitious entries. *Parker v. Nickerson*, 137 Mass. 487.

A vote of the directors of a corporation, authorizing the treasurer to collect unpaid subscriptions, and to obtain such legal counsel as he should see fit for that purpose, authorizes him to commence a suit against a subscriber. *Music Hall Co. v. Carey*, 116 Mass. 471.

Where the treasurer of a corporation is chosen for a term of three years, and gives a bond for faithful performance, it is not a continuing one. *Richardson v. Dean*, 130 Mass. 242.

A corporation is not estopped from maintaining an action upon its treasurer's bond, by accepting the report of an auditing committee, which has approved his accounts, nor by making a report to the legislature founded thereupon. *Lexington v. Elwell*, (8 Allen) 90 Mass. 371.

If the treasurer of a corporation misappropriates its funds, and, without authority, lends them to a third person, an action of contract by the corporation against such person is not a ratification of the treasurer's acts, and does not discharge him from liability to the corporation; nor is he discharged from liability by the fact that the corporation settled its claim against such third person for forty per cent. of its amount, there being good reason to believe that no more could be realized, owing to the insolvency of such third person and the treasurer having been called upon and having declined to pay the claim and taken an assignment of the cause of action against such third person. *Dental Co. v. Caduc*, 144 Mass. 85; 10 N. E. Rep. 483.

If the treasurer of a corporation is a defaulter, and if, while his defalcation is as yet unknown and unsuspected, he steals money from a third person and places it with the funds of the corporation to conceal and make good his defalcation, and if the corporation uses the money as its own, no other officer knowing of the facts, the corporation cannot hold the money as against the true owner. *Mills v. Indian Mills*, 147 Mass. 268; 17 N. E. Rep. 496.

Where the body of the note recited that "we promise to pay" was signed by one who appended the word "treasurer" to his name, and was followed by a corporate seal, it was held that the note was the note of the corporation and not of the signer. *Miller v. Roach*, 150 Mass. 140; 22 N. E. Rep. 634.

**Officers in general.**—A defendant sued by a corporation, by direction of its officers de facto, cannot defend upon the ground that such officers were not duly elected. *Assn. v. Baldwin*, (1 Met.) 42 Mass. 359.

Evidence that the indorsement of a note in the name of the corporation by the secretary was made with the knowledge and consent of the directors, will authorize a jury to infer that the secretary had authority. *Williams v. Cheney*, (3 Gray) 69 Mass. 215.

Those who deal with a manufacturing and trading corporation are not bound by specifically enumerated powers of the officers in the by-laws, but as to them, such officers are presumed to have the authority which their designations ordinarily imply. *Fay v. Noble*, (12 Cush.) 66 Mass. 1.

One who is a stockholder and director, and an overseer of part of the business of the corporation, has not thereby authority to bind the corporation to a contract to aid in the extension of a railroad. *New Haven Co. v. Hayden*, 107 Mass. 525.

An officer may lawfully sell property to the corporation at a higher price than he paid for it, if



## Directors and officers; election; stockholders — P. S., ch. cvi, §§ 24-29.

it was not purchased in the course of his official duty. *Parker v. Nickerson*, 137 Mass. 487.

As to a special contract for salary as superintendent of a railroad, see *R. R. v. Paige*, 135 Mass. 145.

As to the validity of a special contract whereby an employe deposited money to abide the decision of the president as to his fidelity, etc., see *White v. R. R.*, 135 Mass. 216.

A corporation is not bound as to third persons, by interpolations fraudulently inserted in its record, giving power to an officer, unless such third persons have known and acted upon such records. *Holden v. Hoyt*, 134 Mass. 181. See also *Bank v. Root*, (2 Met.) 43 id. 521; *Comm. v. Bank*, 137 id. 431.

An officer is not entitled to compensation for indorsing the notes of the corporation, in the absence of a special agreement. *Parker v. Nickerson*, 137 Mass. 487.

A corporation may, by its course of business, give such a construction to the powers of one of its officers as to authorize him to bind it by contracts. *Nashua Iron, etc., Co. v. Chandler, etc.*, Co., 166 Mass. 419; s. c., 44 N. E. Rep. 348.]

§ 24. The directors, clerk, and treasurer shall be chosen annually by the stockholders by ballot, and shall hold their offices for one year and until others are chosen and qualified in their stead. The manner of the choice or appointment of all other agents and officers, and the manner of filling all vacancies, shall be prescribed by the by-laws.

See ch. 105, § 4, subd. 3; id., § 12; ch. 106, §§ 25-28; and § 23, ante, and note.

[Unless the charter or a by-law of the corporation, or some general act of the legislature requires a director to be a stockholder, one who is not a stockholder may be elected and act as such. *Wight v. R. R.*, 11, Mass. 226.

The presence at a directors' meeting of a person elected director and his making a motion thereat, are presumptive, but not conclusive, evidence of his acceptance. *Blake v. Bayley*, (16 Gray) 82 Mass. 531.

Where the laws provide that the clerk shall be chosen annually, and shall continue in office until his successor is chosen and qualifies, if the clerk is re-elected, he holds under the first election until he qualifies anew. *Hastings v. Turnpike*, (9 Pick.) 26 Mass. 80.

Where the agent of a manufacturing corporation is empowered by its by-laws to manage its affairs, and promptly to collect all assessments, and disburse them according to the order of the board of directors, he may, if the board does not interfere, employ and pay workmen, or if not in funds, give the corporation's note for that purpose. *Bates v. Iron Co.*, (7 Met.) 48 Mass. 224.

Where a corporation refuses, upon notice, to produce its records, oral evidence of the election or appointment of its officers or agents is admissible. *Thayer v. Ins. Co.*, (10 Pick.) 27 Mass. 326; *Bank v. Atlantic Co.*, (3 Met.) 44 id. 282.]

§ 25. The number of the directors shall not be less than three. One of them shall be chosen president by the directors.

See ch. 105, § 4, subd. 3; § 23, ante, and note.

§ 26. The clerk shall be sworn, and shall record all votes in a book to be kept for that purpose, and shall perform such other duties as shall be assigned to him. The treasurer shall give bond for the faithful discharge of his duty in such sum and with

such sureties as shall be required by the by-laws.

Treasurer shall give bond. Acts 1896, ch. 346, at p. 61. Treasurer to keep list of stockholders. Ch. 105, § 21. Clerk to furnish names of stockholders. § 63, post. Making false entry in book. Ch. 203, § 56.

§ 27. (As amended April 3, 1888.) At all meetings absent stockholders may vote by proxy, authorized by a writing executed and dated within six months previous to the meeting at which it is used, if the maker thereof resides in the United States.

Mode of voting by proxy determined by by-laws. Ch. 105, § 5. Officers voting by proxy. Ch. 105, § 14. Same. Acts of 1889, ch. 222.

§ 28. Every such corporation may determine by its by-laws what number of stockholders shall attend, either in person or by proxy, or what number of shares or amount of interest shall be represented at any meeting, to constitute a quorum. If the quorum is not so determined, a majority in interest of the stockholders shall constitute a quorum.

See ch. 105, § 5.

## CAPITAL STOCK.

§ 29. Each stockholder shall be entitled to a certificate of his stock, under the seal of the corporation, and signed by its treasurer.

Certificates void, when. Ch. 105, § 19. Lost certificates. § 30, post. Delivery of certificate. Acts of 1884, ch. 229.

[Shares in a corporation are not chattels, personally, susceptible of possession; if not choses in action, they are in the nature of choses in action. The certificate is not the stock and the corporation cannot affect the stockholder's right by withholding it. *Glass Co. v. Dewey*, 16 Mass. 94; *Ellis v. Bridge*, (2 P.) 19 id. 243; *Hutchins v. Bank*, (12 Met.) 53 id. 421; *Fisher v. Bank*, (5 G.) 71 id. 373; *Field v. Pierce*, 102 id. 253.

Accordingly, where one agrees to give another certain shares in a corporation to be organized, and the corporation wrongfully withholds a certificate, the remedy is against the corporation, not the promisor. *Field v. Pierce*, 102 Mass. 253.

An action to recover the value of shares, and interest from demand, lies in favor of the owner against a corporation which refuses to deliver to him a certificate therefor and wrongfully sells the shares to another, or otherwise converts them to its own use; and the action may be either in contract or tort. *Hussey v. Bank*, (10 P.) 27 Mass. 415; *Wyman v. Powder Co.*, (8 C.) 62 id. 168. See also *Gray v. Bank*, 3 id. 364; *Sargent v. Ins. Co.*, (8 P.) 25 id. 90.

A bill in equity to compel the issuing of a certificate will lie against the corporation. *Sewall v. Boston Co.*, (4 A.) 86 Mass. 277; *Pratt v. Copper Co.*, 123 id. 110; *Sibley v. Bank*, 133 id. 515.

A certificate of stock, expressed upon its face to be transferable only upon the books of the corporation, and transferred in blank upon the back, is not a negotiable instrument. *Shaw v. Spencer*, 100 Mass. 382. See *Sewall v. Boston Co.*, (4 A.) 86 id. 277.

In the absence of any provision in the charter or otherwise, a corporation has no lien upon the shares of one of its members for the payment of a debt or the performance of a contract. *Sargent*

Shares, transfer; par value; increase or reduction of capital — P. S., ch. cvi, §§ 30-37.

v. Ins. Co., (8 P.) 25 Mass. 90; Iron Co. v. Hooper, (7 C.) 61 id. 182.

But a lien, given by the law of the State where a foreign corporation is situated, is recognized here; and it is not waived by a promise, without consideration, to issue a new certificate to the transferee. Bishop v. Globe Co., 135 Mass. 132.]

§ 30. Shares may be transferred by the proprietor by an instrument in writing under his hand, which shall be recorded by the clerk in a book to be kept for that purpose. The purchaser named in such instrument so recorded shall, on producing the same to the treasurer and delivering to him the former certificate, be entitled to a new certificate. In case of the loss of a certificate, a duplicate certificate may be issued upon such reasonable terms as the directors shall prescribe.

Records of transfers to be kept. Ch. 105, § 23. See § 29, ante. Transfers not to affect right of corporation. Ch. 105, § 24. Transfers as security. Ch. 105, § 25. Record of. Ch. 105, § 26. Fraudulent transfers. Ch. 203, § 55. See especially note to ch. 229, Acts of 1884, at p. 45.

§ 31. The par value of shares in the capital stock of any corporation organized for the purposes mentioned in sections nine and ten may be one hundred dollars or any sum fixed in its articles of association, and any such corporation at a meeting of its stockholders called for the purpose may change the par value of its shares: Provided, That a certificate of such change shall within ten days thereafter be made, signed, and sworn to by its president, treasurer, and a majority of its directors, and be filed in the office of the secretary of the commonwealth.

Par value to be one hundred dollars. Ch. 105, § 16, and cross-references.

§ 32. The amount of the capital stock of every corporation established subject to this chapter by special charter, and not organized, shall be fixed and limited by the corporation, and shall at its first meeting be divided into shares, of which a record shall be made by the clerk.

See § 20, ante. How changed. § 33, post. Increase and reduction of capital stock. §§ 35-41, post. Certificates of same. §§ 56-57, post. Capital, how paid in. §§ 47-49, post.

§ 33. The capital stock of every corporation subject to this chapter, the amount whereof has been fixed and limited by such corporation according to law, shall remain so fixed, subject to be increased or reduced pursuant to the provisions of this chapter.

See § 32, ante, and cross-references. Special stock. § 42, post. Stocks or scrip dividends prohibited. Acts of 1894, ch. 350.

§ 34. Every corporation which is subject to this chapter, at a meeting called for the purpose, may increase or reduce the amount

of its capital stock and the number of shares therein, within the limitations of its charter in the case of a chartered corporation, and within the limitations of this chapter if organized under general laws.

See § 33, ante; §§ 35, 36, post. Certificates of increase or reduction. §§ 56, 57, post. Increase of stock. Acts of 1894, ch. 472. Shareholders to have notice of. Ch. 105, § 20. Liability of stockholders for debts at time of reduction of capital. § 61, post. Issuing stock beyond amount authorized. Ch. 203, § 54.

[Where the capital stock was fixed in the charter at fifty thousand dollars, with liberty to increase it to one hundred and fifty thousand dollars, and the sum of one hundred thousand dollars having been subscribed, the subscribers proceeded to increase the capital at once to that sum, it was held that the corporation was never legally organized, and could not maintain an action to recover the subscription. Land Co. v. Holley, 129 Mass. 540.]

A corporation created with a limited capital cannot increase or diminish it without legislative sanction, nor, if its capital is parceled out into a fixed number of shares, can it increase or diminish their number. Salem v. Ropes, (6 P.) 23 Mass. 23.]

§ 35. A corporation created by special charter before the twenty-second day of March in the year eighteen hundred and seventy-one for the purpose of making and selling gas for light in a city or town, or of carrying on any mechanical or manufacturing business authorized by this chapter, or of mining, may increase its capital stock to an amount not exceeding one million dollars, and may reduce the same, subject to the provisions of this chapter.

See §§ 32, 34, ante.

§ 36. A mechanical, manufacturing, or gas corporation, whose capital stock is increased under the preceding section, may hold real estate necessary for the purposes for which it was organized, not to exceed in amount three-fourths of its capital stock.

Power to convey lands. Ch. 105, § 6. Corporation may hold real estate. § 50, post. Same. Acts of 1888, ch. 321.

§ 37. When any corporation subject to this chapter, except a co-operative association or a gas company, increases its capital stock, its directors shall give written notice of such increase to each of its stockholders in like manner as is provided in section twenty of chapter one hundred and five, and each stockholder may take his proportion of the new shares as is provided in said section; and the shares which are not so taken may be sold or issued in such manner as its stockholders may by vote direct: but no shares shall be so sold or issued for a less amount than the par value thereof.

Par value to be one hundred dollars. Ch. 105, § 16. See §§ 38-41, post. Sale of shares to pay assessment. §§ 44, 45, post.



## Sale of new shares; special stock; assessments — P. S., ch. cvi, §§ 38-44.

[Where the capital stock is increased, the stockholders, under above section, must direct the manner of sale thereof. *Smith v. Franklin Park L. & I. Co.*, 168 Mass. 345; s. c., 47 N. E. Rep. 409.]

§ 38. When a co-operative association increases its capital stock, the new shares may be sold or issued in such manner as the stockholders may by vote direct, but not for a less amount than the par value thereof.

See ch. 105, §§ 16, 20. Shares, how disposed of. § 37, ante.

§ 39. When a gas company increases its capital stock, the new shares shall be sold and disposed of at public auction for the benefit of the corporation, in the manner provided in the two following sections; and only such number of shares shall be issued as, when so sold and disposed of, will produce the amount necessary for the purposes for which such increase is authorized.

See ch. 105, §§ 16, 20. Shares, how disposed of. § 37, ante.

§ 40. All shares so issued shall be offered for sale to the highest bidder, in the city or town where the corporation is located or in the city of Boston, or in both places, and notice of the time and place of such sale shall be published at least five times during the ten days immediately preceding the sale, in the newspaper in which the general laws are published, and in two other daily newspapers in the city of Boston, and in one or more newspapers in the city or town where such corporation is located; or if no newspaper is published in such city or town, the sale shall be advertised in one or more newspapers published nearest thereto.

See ch. 105, §§ 16, 20. Shares, how disposed of. § 37, ante.

§ 41. Not exceeding two thousand shares of the stock of any such corporation shall be offered for sale on one and the same day; and no share shall be sold or issued for a less sum to be actually paid in cash than the par value thereof.

§ 42. Every corporation subject to this chapter, by a vote of three-fourths of its general stockholders at a meeting duly called for the purpose, may issue special stock. The special stock shall at no time exceed two-fifths of the actual capital, and shall be subject to redemption at par after a fixed time, to be expressed in the certificates. Holders of special stock shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed half-yearly sum or dividend, to be expressed in the certificates, not exceeding four per cent., and they shall in no event be liable for the debts of the corporation beyond their stock.

[By Stat. of 1886, ch. 209, corporations may issue special stock to be held by their employees only.]

See § 33, ante. Special stock corporation authorized to issue. Acts of 1886, ch. 209. Liability of stockholders. § 61, post. As to dividends, see note to § 27, ch. 105.

[As to the difference between special stock and preferred stock, and the characteristics of both, see *Tube Works v. Machine Co.*, 139 Mass. 5; 29 N. E. Rep. 63.

A vote of a corporation to issue special stock, at a meeting called under Stat. 1870, ch. 224, § 25, to consider whether it will issue preferred stock, is invalid. *Id.*

A vote to issue special stock at a meeting held under above section is invalid, unless the records show that it was voted for by three-fourths of the stockholders. *Id.*

As to the rights of the holder of special stock illegally issued, and the liabilities of the corporation respecting the same, see *Id.*; *Reed v. Machine Co.*, 141 *Id.* 454; s. c., 5 N. E. Rep. 852.

A certificate of shares of the guaranteed stock of a corporation, declaring that dividends at a certain rate are to be paid out of the net earnings, does not constitute the holder a creditor of the corporation so as to enable him to maintain an action at law to recover the stipulated dividends, although the certificate also declares that the payment of such dividend is guaranteed. *Williston v. R. R.*, (13 Allen) 95 Mass. 400.]

§ 43. Every corporation which is subject to this chapter, from time to time at a legal meeting called for the purpose, may assess upon each share such sums of money as it deems proper, not exceeding in the whole the par thereof; and the sums so assessed shall be paid to the treasurer at such times and by such instalments as the corporation directs.

Stockholders to be assessed in proportion. § 65, post. See §§ 44, 45, post, and notes.

§ 44. If the proprietor of a share neglects to pay a sum duly assessed thereon for the space of thirty days after the time appointed for payment, the treasurer of the corporation may sell by public auction a sufficient number of his shares to pay all assessments then due from him, with necessary and incidental charges.

Mode of selling determined by by-laws. Ch. 105, § 5. See § 37, ante, as to sale of new shares.

[Where the statute prescribes the terms and the mode of selling shares for non-payment of assessments, and provides that the subscriber is liable for the deficiency, a strict compliance therewith is a condition precedent, without which the subscriber is not liable. *R. R. v. Graham*, (11 Met.) 52 Mass. 1; *R. R. v. Staples*, (5 G.) 71 *Id.* 520. But a by-law of the corporation, requiring the treasurer to give notice to the delinquent in a certain manner, is directory merely; and a notice given in another manner effecting substantially the purpose, suffices. *R. R. v. Chandler*, (13 Met.) 54 Mass. 311. Where, upon a subscriber failing to pay an assessment, the company, without formally declaring the shares forfeited, took subscriptions from others, to the full amount of its capital, could not, under the General Statutes, sell the shares and sue the subscriber for the deficiency. *R. R. v. Prescott*, 110 Mass. 213. A sale under the statute for non-payment of two or more assessments is void, if one of the assessments is illegal, because prematurely made. *R. R. v. Gould*, (2 G.) 68 Mass. 277.

**Suits against subscribers to recover subscriptions.**—In an action by a manufacturing company against members to recover a subscription, defendant cannot object that corporation has not been duly organized, where it was organized de facto and transacted business for several years. *Glass Co. v. Dewey*, 16 Mass. 94.

A corporation created under the statutes of 1804 and 1808 could not recover, by action or set-off, an assessment upon a subscription for shares, without an express promise; but was confined to a sale of the shares for non-payment. *Turnpike v. Gould*, 6 Mass. 40; *Turnpike v. Hay*, 7 id. 102; *Turnpike v. Adams*, 8 id. 138; *Glass Co. v. White*, 14 id. 286; *Cutler v. Middlesex*, (14 P.) 31 id. 483.

Such is still the rule, unless the statute gives a right of action, but an action lies upon an express promise to pay, although the corporation has the power to sell the shares. *Turnpike v. Willard*, 5 Mass. 80; *Turnpike v. Whiting*, 10 id. 327; *Glass Co. v. Dewey*, 16 id. 94; *Salem v. Ropes*, (6 P.) 23 id. 23; *Ripley v. Sampson*, (10 P.) 27 id. 371; *Mills v. Abbott*, (9 C.) 63 id. 423; *Hotel v. Dickenson*, (6 G.) 72 id. 586; *R. R. v. Wellington*, 113 id. 79; *Co. v. Hall*, 121 id. 272; *Land Co. v. Jernegan*, 126 id. 155.

Where the charter fixes the capital stock, or requires it to be divided into a certain number of shares, an action to recover an assessment laid for general purposes will not lie, unless the whole capital was subscribed before the assessment was made. *Salem v. Ropes*, (6 P.) 23 Mass. 23; *Bridge v. Story*, (6 P.) id. 45, note; *Salem v. Ropes*, (9 P.) 26 id. 187; *R. R. v. Gould*, (2 G.) 68 id. 277. But an assessment to defray preliminary expenses is valid, although the full amount is not subscribed. *Salem v. Ropes*, (6 P.) 23 Mass. 23; *Turnpike v. Valentine*, (10 P.) 27 id. 142.

An unauthorized subscription by one on account of another cannot be included to make up the full amount. *Salem v. Ropes*, (9 P.) 26 Mass. 187. But an unexpected insolvency of a subscriber will not defeat the power to assess for general purposes. Query, as to a long-continued solvency. Id.

Where the subscription provides that assessment be laid when a certain number of shares are subscribed for, or a certain rate, or any other condition, the terms must be fully complied with to validate an assessment. *Turnpike v. Valentine*, (10 P.) 27 Mass. 142; *Bridge v. Chapin*, (6 C.) 60 id. 50; *Mills v. Abbott*, (9 C.) 63 id. 423; *R. R. v. Newton*, (8 G.) 74 id. 596. As, if the charter prescribes that the directors shall determine the amount of the capital, in which case their vote to close the books suffices. *R. R. v. Chandler*, (13 Met.) 54 Mass. 311; *R. R. v. Hinds*, (8 C.) 62 id. 110; *R. R. v. Newton*, (8 G.) 74 id. 596.

The fixing of the amount of the capital stock is not a condition precedent to an action on a subscription, if neither the charter nor the subscription requires any stated amount. *Hotel v. Dickinson*, (6 G.) 72 Mass. 500.

So of a vote of the company to issue a certain number of new shares each stockholder being allowed his pro rata thereof. *Nutter v. R. R.*, (6 G.) 72 Mass. 85.

A contract to build the road and take part of the pay in stock, the contractor subscribing for that amount, fulfills a condition that all the stock shall be taken. *R. R. v. Wellington*, 113 Mass. 79.

The subscription book, which has been always treated by the directors as showing the number of shares subscribed for, is prima facie evidence of such subscription. *R. R. v. Arnold*, (9 G.) 75 Mass. 159.

Where the capital is to consist of not less than four thousand nor more than ten thousand shares, the subscription is valid when four thousand shares are subscribed for. *R. R. v. Bartlett*, (12 G.) 78 Mass. 244; *R. R. v. Wellington*, 113 id. 79.

Where the capital was fixed at fifty thousand dollars, with liberty to increase it to one hundred and fifty thousand dollars, and one hundred thousand dollars in all was subscribed, and after accepting certain subscriptions amounting to fifty thousand dollars, the meeting voted to increase the stock to one hundred thousand dollars, and that all the subscribers should be admitted, this does not en-

able the corporation to recover against a subscriber who was not thus accepted. *Land Co. v. Jernegan*, 126 Mass. 155. See also *Hall v. Carey*, 116 id. 471; *Land Co. v. Holley*, 129 id. 540.

Where the terms of the subscription have not been complied with, a voluntary payment of an assessment and taking the shares do not amount to a waiver of compliance. *Mills v. Abbott*, (9 C.) 63 Mass. 423; cited approvingly in *Land Co. v. Jernegan*, 126 id. 155.

A subscription does not bind the subscriber, unless the corporation expressly or impliedly accepts it. *Turnpike v. Adams*, 8 Mass. 138; *Turnpike v. Collins*, id. 202; *Ferry v. Balch*, (8 G.) 74 id. 303; *Land Co. v. Jernegan*, 126 id. 155.

A subscription to take shares in a turnpike company does not bind if the course of the road is afterwards altered by statute, although the subscriber, as a director, petitioned for the alteration. *Turnpike v. Locke*, 8 Mass. 268; *Turnpike Co. v. Swan*, 10 id. 384; *Turnpike Co. v. Walker*, id. 390.

But where a railroad company, having filed a location, of which the first division terminated at a point in P., was empowered by statute to build its road in sections, and so built it; and afterwards filed a new location, not divided into sections, and not mentioning the point in P.; this re-location did not discharge a previous subscriber. *R. R. v. Wellington*, 113 Mass. 79. See also *R. R. v. Winchester*, (13 A.) 95 id. 29.

And if a railroad company's charter is made subject to amendment, a subsequent amendment, extending the time to complete the road, will not discharge a subscriber. *R. R. v. Winchester*, (13 A.) 95 Mass. 29.

Nor will a subscriber be discharged if the charter is amended by reducing the capital required to build the railroad, by the taking, by the company, of subscriptions smaller in amount than the capital originally allowed, but larger than that allowed by the amendment. *R. R. v. Winchester*, (13 A.) 95 Mass. 29. Or because the company has commenced to build, before the proportion required for that purpose by the charter has been paid in. *R. R. v. Winchester*, (13 A.) 95 Mass. 29.

A subscription for shares, whereby the subscriber promised to pay to A., as agent of the corporation, or order, will support an action by the corporation, but not by the agent. *Gilmour v. Pope*, 5 Mass. 491. Query, where the subscription is before the incorporation. *Ferry v. Balch*, (8 G.) 74 Mass. 303.

A promise to pay into the funds of the company as the president and directors may require, is a promise to the corporation, and will support an action by it, after assessment and demand. *Hotel v. Dickinson*, (6 G.) 72 Mass. 586.

A contract between associates to pay two of their number a certain sum per share for the construction of a telegraph line, in consideration of which those two agreed "to convey in fee-simple" the telegraph line, etc., without stating to whom, renders a subscriber liable to the two named, where, upon completion, they conveyed to a corporation created by the incorporation of the associates, although without express assent of the subscribers sued. *Brewer v. Stone*, (11 G.) 77 Mass. 228.

A subscriber, who has given his note for his subscription, cannot defend an action upon it, on the ground that the corporation is required by its charter to invest its stock in certain specified funds. *Little v. O'Brien*, 9 Mass. 423.

Nor is it a defense to an action for a subscription that the corporation was chartered to build a hotel, and part of the building is occupied for shops. *Hotel v. Dickinson*, (6 G.) 72 Mass. 586.

Or that the committee erroneously exaggerated the extent of the water power that could be created by a corporation organized for that purpose. *Salem v. Ropes*, (9 P.) 26 Mass. 187.

One who has given a note for his subscription to the capital stock of a corporation cannot defend on the ground that the charter requires the capital to be paid in and invested in a specific manner. *Little v. O'Brien*, 9 Mass. 423. See also *Bank v. Jenks*, (7 Met.) 48 id. 592.



## Sale of stock to pay assessments; capital stock, how paid — P. S., ch. cvi, §§ 45-50.

**Rights of subscribers.**—Where a railroad company agrees, as part of the subscription, that assessments shall bear interest, until the road goes into operation, the interest is not payable until the road goes into operation. *Waterman v. R. R.*, (8 G.) 74 Mass. 433. See also *Wright v. R. R.*, (12 C.) 66 id. 68.

A vote of the directors, stopping interest after a certain day, does not create a present debt to the subscriber, on which he can maintain an action. *Wright v. R. R.*, (12 C.) 66 Mass. 68. Where the corporation has voted to pay interest at a future day, with a condition that if there is not then enough money in the treasury paid in full, it shall be paid pro rata, a subscriber can recover only upon proof of sufficient funds in the treasury, having regard to contingencies for outlays; and the court, not the directors, is to determine that question. *Barnard v. R. R.*, (7 A.) 89 Mass. 512. See also *Cunningham v. R. R.*, (12 G.) 78 id. 411.

Where, by the terms of the subscription, it is recommended that interest be paid on payments for stock, a subscriber cannot resist payment of his subscription on the ground that interest has been paid. *R. R. v. Winchester*, (13 A.) 95 Mass. 29.

Where a subscriber to articles of association, prepared to form a corporation under General Statutes, fails to perform his part of the subscription, he cannot maintain an action against the corporation, after it is formed, for refusal to deliver him the shares, upon tender of payment, although his name is entered into the subscription book, and he has been requested to pay his subscription, and the shares were afterwards allowed to be taken by another, without selling them under the statute. *Perkins v. Button Co.*, (12 A.) 94 Mass. 273. See also *Field v. Pierce*, 102 id. 253.]

§ 45. The treasurer shall give notice of the time and place appointed for such sale, and of the sum due on each share, by advertising the same three weeks successively before the sale in some newspaper printed in the county where the corporation is established, and, if there is no such paper, then in some newspaper printed in an adjoining county; and a deed of the shares so sold, made by the treasurer and acknowledged before a justice of the peace and recorded as provided in section thirty, shall transfer said shares to the purchaser, who shall be entitled to a certificate therefor.

See ch. 105, § 32.

§ 46. No corporation which is subject to this chapter shall commence the transaction of the business for which it was organized or chartered until the whole amount of its capital stock has been paid in, and a certificate of that fact, and of the manner in which the same has been paid in, and at the time of making the certificate been invested or voted by the corporation to be invested, signed and sworn to by the president, treasurer, and a majority at least of the directors, has been filed in the office of the secretary of the commonwealth.

See § 21, ante. Stockholders liable for debts contracted before capital fully paid in. §§ 60, 61, post. Same as to foreign corporations. Acts of 1896, ch. 391.

§ 47. No note or obligation given by a stockholder, whether secured by pledge or otherwise, shall be considered as payment of any part of the capital stock; but the

capital stock shall be paid in either in cash or in the manner provided in the two following sections.

See § 32, ante. Paid in property. §§ 48, 49, post. Relative to paying in capital stock. Acts of 1896, ch. 391.

§ 48. Conveyance to the corporation of property real or personal, at a fair valuation, shall be deemed a sufficient paying in of its capital stock to the extent of such value, if a statement, made, signed, and sworn to by its president, treasurer, and a majority of its directors, giving a description of such property and the value at which it has been taken in payment, in such detail as the commissioner of corporations shall require or approve, and endorsed with his certificate that he is satisfied that said valuation is fair and reasonable, is filed with the secretary of the commonwealth.

Such statement, when made by a corporation hereafter organized, shall be included in the certificate of payment of capital required by section forty-six.

[As to the payment of capital stock and bonds of telegraph, telephone, aqueduct and water companies, see Acts of 1894, chs. 380 and 452. As to gas and electric-light companies, see Id., ch. 450.]

See § 47, ante. Liability of officers for false statement. § 60, post.

§ 49. If the corporation was organized for the purpose of acquiring claims against or property of a bankrupt or insolvent corporation, or property conveyed by it for the benefit of its creditors, as provided in section fifteen, any such claims or property may be assigned and conveyed to the corporation in payment for shares of its capital stock at a fair and reasonable valuation, to be determined and approved by the commissioner as provided in the preceding section; and his decision that such valuation is fair and reasonable, when made and certified as required by said section, shall be final and conclusive. No claim shall be so assigned or conveyed unless within three years from the date when the original corporation was adjudicated bankrupt or insolvent, or made such assignment for the benefit of its creditors.

See § 47, ante.

## BUSINESS OF CORPORATIONS.

§ 50. Every corporation which is subject to this chapter may in its corporate name purchase, hold, and convey such real and personal estate as is necessary for the purposes of its organization; may carry on its business, or so much thereof as is convenient, beyond the limits of the commonwealth, and may there purchase and hold any real or personal estate necessary for conducting the same; but shall not direct its operations or appropriate its funds to any other purpose than that specified in its agreement of association or its charter, as

the case may be, except as provided in chapter one hundred and five and in the three following sections.

See § 36, ante; §§ 51-53, post. Corporations governed by this chapter. § 3, ante. General powers, etc. Ch. 105, §§ 4-7.

[A corporation authorized to take possession of land may acquire a title by disseisin and adverse possession, although it did not authorize the disseisin by deed. *Precinct v. Soc.*, (23 P.) 40 Mass. 139.

A corporation authorized to hold lands for depots and storehouses and for railroad purposes, and to authorize other railroad corporations to establish depots on its lands may mortgage lands not needed for those purposes; and if the mortgage includes lands which it is not authorized to convey, the mortgage is void only pro tanto. *Hendee v. Pinkerton*, (14 A.) 96 Mass. 381. And such a corporation may maintain a bill for the specific performance of a contract to purchase land, which it purchases for the gravel therein. *R. R. v. Evans*, (6 G.) 72 Mass. 25.

A corporation cannot mortgage or sell its franchise, unless there is legislative authority for so doing, either expressly or by reasonable implication. *Comm. v. Smith*, (10 A.) 92 Mass. 448; *Richardson v. Sibley*, (11 A.) 93 id. 65; *R. R. v. R. R.*, (13 A.) 95 id. 422; *R. R. v. R. R.*, 115 id. 347.

A corporation has power to purchase any property necessary or proper to be used in the business which it was incorporated to carry on, and to sell or let any property so acquired by it, and not needed to carry on such business. *Brown v. Company*, (11 A.) 93 Mass. 326; *Glass Co. v. Mass. Glass Co.*, 111 id. 315; *Dupee v. Boston Co.*, 114 id. 37.

A corporation having only an easement in property cannot transfer the property for other purposes; and if a railroad company leases land, taken by right of eminent domain, to private individuals, for shops, etc., the owner of the fee may maintain a writ of entry although such use of the property is advantageous to the company, and its abandonment thereof is not intended to be permanent. *Canals v. R. R.*, 104 Mass. 1.

Manufacturing and trading corporations have power to borrow money, as incident to their power to purchase and to give security by pledge of or mortgage upon their property. *Fay v. Noble*, (12 C.) 66 Mass. 1.

A corporation has no power to take private property, without the consent of the owner, except by legislative authority. *Thatcher v. Bridge*, (18 P.) 35 Mass. 501.

A corporation having power to construct booms, etc., in a river cannot enter an individual's close adjoining the river, without his consent. *Perry v. Wilson*, 7 Mass. 393. See also *Hood v. Bridge*, 3 id. 263.]

§ 51. Any corporation organized under the provisions of this chapter, or of chapter two hundred and twenty-four of the statutes of the year eighteen hundred and seventy, or of any statute in amendment thereof or in addition thereto, may, upon the vote of all its stockholders at a meeting duly called for the purpose, alter, add to, or change the business for the transaction of which it was incorporated, but shall not engage in any business which is not authorized by the provisions of this chapter. A certificate setting forth such alteration, addition, or change, signed and sworn to by the president, treasurer, and a majority of the directors, shall be filed in the office of the secretary of the commonwealth.

[This section is made to apply to all corporations mentioned in the third section, and to those which have complied with the provisions of the fourth section. See Stat. of 1885, ch. 310.]

Fees for filing certificate. Acts of 1895, ch. 169. See ch. 105, § 7. Change of business. Acts of 1885, ch. 310.

§ 52. Any gas company organized or chartered before the ninth day of April in the year eighteen hundred and seventy-nine may engage in the business of generating or furnishing steam or hot water for heating, cooking, and mechanical power in a city or town, by a vote of four-fifths of the stockholders representing not less than two-thirds of the stock, at a meeting duly called for that purpose, upon filing in the office of the secretary of the commonwealth a certificate as provided in the preceding section.

[See Stat. of 1885, ch. 240; Stat. of 1887, ch. 385.]

Fees for filing certificate. Acts of 1895, ch. 169. Not to transact business not specified in charter. § 50, ante.

§ 53. Corporations organized or chartered for the manufacture of cotton or woollen goods may, upon the consent of four-fifths of the stockholders by a vote at a meeting called for the purpose, carry on the manufacture of silk, linen, flax, or india-rubber goods.

See § 50, ante.

#### CERTIFICATES AND RETURNS.

§ 54. Every corporation mentioned in section three, and every corporation subject to the provisions of the statute approved on the third day of March in the year eighteen hundred and nine, entitled "An act defining the powers and duties of manufacturing corporations," shall annually make and file in the office of the secretary of the commonwealth, within thirty days after the date fixed in its by-laws for its annual meeting next preceding the date of such certificate, or within thirty days after the final adjournment of said meeting, but not more than three months after the date so fixed for said meeting, a certificate signed and sworn to by its president, treasurer, and at least a majority of its directors, stating the date of holding such meeting, the amount of capital stock as it then stands fixed by the corporation, the amount then paid up, the name of each shareholder and the number of shares standing in his name, and the assets and liabilities of the corporation, in such form and with such detail as the commissioner of corporations shall require or approve.

[By Stat. of 1887, ch. 225, every corporation chartered subsequently to the twenty-third day of February, eighteen hundred and thirty, or organized



under the general laws for business or profit, having a capital stock divided into shares, except banks, insurance companies, steam and street railway companies, safe deposit and trust companies, and the collateral loan company, shall be subject to the provisions of sections fifty-four, fifty-five, fifty-nine, eighty-one, eighty-two, and eighty-four of this chapter.

By Stat. 1891, ch. 341, foreign corporations are required to file annual statements of condition.]

See §§ 55-59, post. Penalty for omitting to file. §§ 81-82, post. Annual returns. Acts of 1887, ch. 225. Certificates of condition. Acts of 1890, ch. 199. Index to certificates. Resolves of 1893, ch. 32. Same. Resolves of 1894, ch. 31. Returns from certain corporations. Acts of 1896, ch. 369. Liability of officers for filing false returns. § 60, post. Fee for filing. § 84, post.

§ 55. When a corporation fails for two successive years to make such annual statement, the commissioner may apply to the supreme judicial court for a dissolution of such corporation, and the court after due notice to all parties interested and a hearing may for reasonable cause decree a dissolution of the corporation.

See Acts of 1896, ch. 369. Dissolution. Ch. 105, § 40.

§ 56. Every corporation which is subject to this chapter shall upon an increase of its capital stock within thirty days after the payment or collection of the last instalment thereof, file a certificate of the amount of such increase and the fact of such payment, signed and sworn to by its president, treasurer, and at least a majority of its directors, in the office of the secretary of the commonwealth.

Increase and reduction of capital stock. § 34, ante. Fee for filing certificate. § 84, post.

§ 57. Every corporation which is subject to this chapter shall, within thirty days after a reduction of its capital stock is voted, file in the office of the secretary of the commonwealth a copy, signed and sworn to by its clerk, of the vote or votes authorizing such reduction.

See § 56, ante, and cross-references.

§ 58. Every corporation organized under authority of this chapter for the purposes specified in section ten shall, within thirty days after obtaining the written authority required by section seventy-four, file a copy of the same, certified by the town clerk or clerk of the board of aldermen, as the case may be, in the office of the secretary of the commonwealth.

See § 21, ante.

§ 59. (As amended by Acts of 1898, ch. 503.) Every certificate required to be filed by the provisions of sections thirty-one,

forty-six, fifty-one, fifty-four, fifty-six, fifty-seven, and fifty-eight, shall, before filing, be submitted to the commissioner of corporations, who shall examine the same; and if it appears to him to be a sufficient compliance in form with the requirements of this chapter, he shall certify his approval thereof by indorsement upon the same; but upon the copies of votes of corporations, or the authorizations of municipal authorities required by the preceding section, he shall indorse only the date and fact of submission to his inspection, and upon paying the fee hereinafter provided, the same may be filed in the office of the secretary of the commonwealth, who shall receive and record the same in books to be kept for the purpose, and upon such filing the corporation and its officers shall be conclusively held to have complied with the requirements of this chapter in respect to the filing of such certificate, except that it may be shown by competent evidence in any court that the statements made in such return were false, and were known to be so by any officer or officers signing or making oath to the same.

See Acts of 1896, ch. 369. Duties of commissioner. § 1, ante.

#### LIABILITY OF OFFICERS AND STOCKHOLDERS.

§ 60. The officers of any corporation which is subject to this chapter shall be jointly and severally liable for its debts and contracts in the following cases, and not otherwise:—

The president and directors shall be so liable.—

First, For making or consenting to a dividend when the corporation is or thereby is rendered insolvent, to the extent of such dividend.

Second, For debts contracted between the time of making or assenting to a loan to a stockholder and the time of its repayment, to the extent of such loan.

Third, When the debts of a corporation exceed its capital, to the extent of such excess existing at the time of the commencement of the suit against the corporation upon the judgment in which the suit in equity to enforce such liability is brought as hereinafter provided.

The president, directors, and treasurer shall be so liable.—

Fourth, For signing any statement filed under section forty-eight, when the property mentioned in such statement is not conveyed and taken at a fair valuation; but only the officer or officers signing the same shall be so liable.

And the president, directors, and other officers shall be so liable.—

Fifth, For signing any certificate required by law knowing it to be false; but only the officer or officers knowing thereof shall be liable.

Sixth. (Added by Acts of 1898, ch. 266.) For debts contracted before the original capital is fully paid in, and the certificate of such payment filed in accordance with section forty-six of this chapter.

See Acts of 1896, ch. 391. Directors liable to penalty. Ch. 105, § 19. Filing of certificates and returns. § 54, ante, and cross-references. Officers not liable until judgment recovered. § 62, post. Liability of officers of foreign corporations. Acts of 1896, ch. 391.

[In a suit in equity against officers to enforce personal liability, where the corporation was organized under Gen. Stat., ch. 61, the certificates are conclusive against defendants as to the corporate character of the association. *Priest v. Hat Co.*, 115 Mass. 380.

The liability for damages from the infringement by the corporation of letters-patent is not, before judgment, a debt for which officers are liable under above section. *Child v. Boston*, 137 Mass. 516.

If a claim against the directors, as such, is included in the same bill with a claim against the stockholders, the bill is multifarious. *Pope v. Leonard*, 115 Mass. 286; *Bank v. Manf. Co.*, 127 id. 562.

Aliter, if several distinct grounds are set forth, each affecting all the defendants in the same manner. *Pope v. Leonard*, supra.

Judgment against the corporation does not merge the debt so as to extinguish officers' liability. *Byers v. Coal Co.*, 106 Mass. 131.

Acting officers cannot take advantage of irregularities, etc., in their own election. *Thayer v. Lithog. Co.*, 108 Mass. 523.

Officer from whom decree has been collected may enforce contribution against other officers. *Nickerson v. Wheeler*, 118 Mass. 235.

Action at law will not lie against officers. *Cochrane v. Reed*, (13 Allen) 95 Mass. 455; *Bond v. Morse*, (9 Allen) 91 id. 471.

If corporation indemnifies one for accepting a draft for its benefit, officers may be made liable although draft does not bind corporation. *Byers v. Coal Co.*, 106 Mass. 131.

Officers making certificate not liable for debt contracted before expiration of corresponding month of next year. *Bond v. Clark*, (6 Allen) 88 Mass. 361.

When debts, for which directors are liable, amount to more than excess of debts over capital, remedy is in equity; sufficiency of bill. *Bank v. Stevenson*, (10 Gray) 76 Mass. 232.

Payment of dividends and preferred debts insolvency does not diminish directors' liability. *Bank v. Stevenson*, (10 Gray) 76 Mass. 232. Filing bill by one creditor for benefit of all does not bar a previous action against corporation by another creditor, or affect his right to levy upon stockholders summoned therein. *Johnson v. Somerville*, (15 Gray) 81 Mass. 216.

Judgment against corporation necessary only for bill against stockholders, not officers. *Bank v. Stevenson*, (10 Gray) 76 Mass. 232; *Cambridge v. Somerville Co.*, (4 Allen) 86 id. 239.

Supersedes as to certain stockholders summoned does not exonerate officers. *Denny v. Richardson*, (4 Gray) 70 Mass. 274. But no defense to stockholders that officers have property enough to pay judgment. *Brayton v. New England Co.*, (11 Gray) 77 Mass. 493.

Where the only officer who has property is adjudged liable as stockholder, sheriff may seize his property on execution, after demand of payment of, and refusal by, corporation. *Lee v. Dearborn*, (4 Allen) 86 Mass. 164. But execution cannot be levied upon property of officer, unless, if he is a stockholder, he has been summoned and his liability established, or, if not, some other stockholder has been summoned and the stockholder's liability established. *Dewey v. Baker*, (16 Gray) 82 Mass. 130.

Under subdivision 5 of above section, providing that officers of a corporation who sign a certificate "knowing it to be false shall be jointly and severally liable for its debts and contracts," a tax is a debt. *Felker v. Yarn Co.*, 148 Mass. 226; s. c., 19 N. E. Rep. 220. The liability is for debts then existing as well as those created subsequently. *Id.*

To create the liability, however, the certificate must be willfully false. It is not enough that the facts were known but forgotten, there being no intention to deceive. *Felker v. Yarn Co.*, 149 Mass. 264.]

§ 61. The members or stockholders in any corporation which is subject to this chapter shall be jointly and severally liable for its debts or contracts in the following cases, and not otherwise:—

First, For such as may be contracted before the original capital is fully paid in; but only those stockholders who have not paid in full the par value of their shares, and those who have purchased such shares with knowledge of the fact, shall be liable for such debts.

Second, For the payment of all debts existing at the time when the capital is reduced, to the extent of the sums withdrawn and paid to stockholders.

Third, When special stock is created, the general stockholders shall be liable for all debts and contracts until the special stock is fully redeemed.

Fourth, For all sums of money due to operatives for services rendered within six months before demand made upon the corporation, and its neglect or refusal to make payment.

Any such member or stockholder who pays on a judgment or otherwise, more than his proportional share of any such debt, shall have a claim for contribution against the other members or stockholders.

Special stock. § 42, ante. Liability, how enforced; limit of liability, etc. §§ 62-71, post. Business not to commence until capital paid in. § 46, ante.

[In an action against the associates of a corporation under Stat. 1851, ch. 133, to hold them individually liable for corporate debts it is necessary to prove the existence of the corporation by articles of association complying with the statute. *Utey v. Tool Co.*, (41 G.) 77 Mass. 139.

There is no liability for corporation debts upon a member or officer, unless it is created by statute, and a statute creating it must be strictly construed. *Stedman v. Eveleth*, (6 Met.) 47 Mass. 114; *Schools v. Flint*, (13 Met.) 54 id. 539; *Gray v. Coffin*, (9 Cush.) 63 id. 192.

A by-law will not suffice for that purpose, unless the member signs it, and money is lent upon the credit thereof. *Schools v. Flint*, (13 Met.) 54 Mass. 539; *Flint v. Pierce*, 99 id. 68.

Where such a liability exists, it extends to contracts made in another State, as if they were made here. *Hutchins v. New England Co.*, (4 Allen) 86 Mass. 580.

Where the members of a corporation personally undertake they are personally liable. *Tilston v. Newell*, 13 Mass. 406.

Where copartners are incorporated, but, in accordance with the by-laws, the business is still carried on in the copartnership name, they are individually liable to one who has no notice of the dissolution. *Goddard v. Pratt*, (16 Pick.) 33 Mass. 412.



## Liability of stockholders — P. S., ch. cvi, § 61.

An execution against "the president, directors and company" of a corporation, commanding the officer to take their bodies, does not protect him for the arrest of a member. *Nicholls v. Thomas*, 4 Mass. 232.

Where persons sign articles of association to form a corporation, under the act of 1866, and some subscribe and take certificates, and others do not, but the association fails to become a corporation, none of the subscribers are liable as partners to a bill for an accounting, etc., by two who, as president and secretary, have transacted business for the inchoate corporation, and thus made themselves liable as principals. *Ward v. Brigham*, 127 Mass. 24. See also *Fay v. Noble*, (7 Cush.) 61 id. 188; *Trowbridge v. Scudder*, (11 Cush.) 65 id. 83; *Bank v. Almy*, 117 id. 476.

The repeal of the former statutes on this subject, by Stat. 1870, ch. 224, § 69, as incident to the new system created by that statute (Pub. Stat. ch. 106), saved the right of the creditor of a manufacturing corporation to hold its officers personally liable, under the statute of 1863, for a debt contracted during their neglect to make a certificate of its condition, although, at the time of the repeal, he had not recovered judgment. *Thayer v. New England Co.*, 108 Mass. 523; *Chamberlin v. Huguenot Co.*, 118 id. 532.

So as to the right to maintain a bill in equity, which was not filed till after the enactment of the act of 1870. *Pope v. Leonard*, 115 Mass. 286.

As to the effect of a statute with respect to the recovery of judgment under former statutes, see *McRae v. Locke*, 118 Mass. 269.

A creditor, who is also a stockholder, cannot enforce the statutory personal liability of other stockholders. *Thayer v. Tool Co.*, (4 G.) 70 Mass. 75; *Potter v. Stevens Co.*, 127 id. 592; *Thompson v. Bemis Co.*, id. 595.

Query, whether the rule applies where he was a mere equitable stockholder. *Crease v. Babcock*, (10 Met.) 51 Mass. 525; *Johnson v. Somerville*, (15 G.) 81 id. 216; *Thompson v. Bemis Co.*, 127 id. 595.

It is no objection to a bill against directors under above statute on the ground that the debts exceeded the capital stock, that a bill is also pending against them as stockholders on the ground that the capital was never paid in. *Bank v. Man. Co.*, 127 Mass. 563.

Stockholders who have not paid the par value of their stock in full are liable under above statute, although the certificate of full payment has been filed. *Id.*

One who takes a certificate of shares as collateral security is liable under the statute, unless his certificate shows upon its face that they are so held, and the burden of proof is upon him. *Id.*

For rulings as to the effect upon former statutes, and the construction of their provisions, which are superseded by above section, see *Id.*

It is no defense, by one defendant, to a bill under the statute to enforce the stockholders' personal liability for money due to operatives, that he has paid some of the operatives other sums due them, and has a claim for contribution therefor against the other defendants. *Burnap v. Haskins Co.*, 127 Mass. 586.

Stockholders, against whom a bill is brought, are jointly and severally liable for the costs. *Id.*

The corporation is a necessary party to the bill, as it was under the former statutes. *Deerfield v. Nims*, 110 Mass. 115; *Pope v. Leonard*, 115 id. 286.

The objection that all the stockholders are not made parties must be taken by plea or answer, although it is apparent on the bill. *Essex v. Lawrence*, (10 Allen) 92 Mass. 352.

An express, oral and contemporaneous agreement between a corporation and a person taking its promissory note that there shall be no personal liability upon the note means that the stockholders shall not be personally liable; and is admissible in defense by a stockholder; and is not merged in a judgment against the corporation. *Brown Slate Co.*, 134 Mass. 590.

Sufficiency of allegation that defendants are stockholders. *Hawes v. Pet. Co.*, 101 Mass. 385.

Until division into shares, and the issue of certificates, the subscribers hold all the stock in common, and are thus liable. *Id.*

Objection that the bill is not on behalf of all creditors is fatal. *Moore v. Reynolds*, 109 Mass. 473; *Pope v. Leonard*, 115 id. 286.

A stockholder's liability gives him no right to defend an action against the corporation. *Byers v. Coal Co.*, (14 Allen) 96 Mass. 470.

Officer's certificate of paid capital conclusive as to stockholders. *Stedman v. Eveleth*, (6 Met.) 47 Mass. 114.

Officers not liable for false certificate, unless willfully false. *Stebbins v. Edmands*, (12 G.) 78 Mass. 203.

Annual notice to exempt stockholders may be published at any time within a year from filing certificate. *Howe v. Carpet Co.*, (16 G.) 82 Mass. 493.

No action at law against stockholders directly. *Knowlton v. Ackley*, (8 Cush.) 62 Mass. 93.

Not even in favor of an operative. *Bell v. Spaulding*, (3 Allen) 80 Mass. 485.

Writ, and service thereof, in suit against corporation and stockholders. *Farnum v. Ballard*, (12 Cush.) 66 Mass. 507; *Bank v. Goodman*, (9 Cush.) 63 id. 576.

Requirements of declaration. *Johnson v. Somerville*, (15 Gray) 81 Mass. 216.

Stockholder cannot defend claim against corporation, but only on personal grounds of defense. *Bank v. Goodman*, (9 Cush.) 63 Mass. 576; *Johnson v. Somerville*, (15 G.) 81 id. 216; *Hobbs v. Dane*, (5 Allen) 87 id. 581.

But may show that plaintiff holds demand, and is suing for benefit of another stockholder, equally liable. *Thayer v. Tool Co.*, (4 G.) 70 Mass. 75.

Plaintiff must prove against stockholders the corporate existence, although corporation defaulted. *Utey v. Tool Co.*, (11 G.) 77 Mass. 139.

Also the failure to comply with a statutory requisition. *Taylor v. Coal Co.*, (4 Allen) 86 Mass. 577.

Alter, as to both propositions. If stockholder defaulted. *Richmond v. Willis*, (13 G.) 79 Mass. 182.

Stockholders severally answering, not entitled to separate trials. *Bank v. Goodman*, (9 Cush.) 63 Mass. 576.

Irregularities in becoming stockholders not available in defense. *Id.*

If corporation defaulted, stockholder cannot deny its liability. *Id.*; *Farnum v. Ballard*, (12 Cush.) 66 id. 507.

Liability for judgment debt not established by proof that in the suit stockholder was summoned and failed to appear. *Mason v. Iron Works*, (4 Allen) 86 Mass. 393.

Liability extinguished by recovery of judgment against corporation if stockholder not summoned and cease to be such before judgment. *Handrahan v. Iron Wks.*, (4 Allen) 86 Mass. 396.

Equitable suit for contribution by one stockholder against others does not lie until plaintiff has exhausted remedy against corporation. *Gray v. Coffin*, (9 Cush.) 63 Mass. 192. How contribution apportioned. *Carey v. Holmes*, (16 G.) 82 Mass. 127. How enforced against guardian. *Mansur v. Pratt*, 101 Mass. 60.

No contribution, unless party shows that he was compelled to pay, by proceedings strictly legal and regular. *Carey v. Holmes*, (16 G.) 82 Mass. 127. No contribution by officers against stockholders. *Stone v. Fenno*, (6 Allen) 88 Mass. 579.

Where one manufacturing corporation takes shares of another, in payment of a debt, it cannot have a remedy against other stockholders of the latter for another debt. *Howe v. Carpet Co.*, (16 G.) 82 Mass. 493.

Creditor, also stockholder, cannot proceed against other stockholders, except for contribution. *Thayer v. Tool Co.*, (4 G.) 70 Mass. 75. See also *Gray v. Coffin*, (9 Cush.) 63 id. 192.

Stockholders cannot remove action from Superior Court to Supreme Judicial Court. *Robbins v. Superior Ct.*, (12 G.) 78 Mass. 225.

Liability of stockholder or officer not provable in insolvency. *Bangs v. Lincoln*, (10 G.) 76 Mass. 600.

Executor cannot be required to continue defense for stockholder who dies. *Dane v. Man. Co.*, (14 G.) 80 Mass. 488.

If same person held stock and other property as trustee, the other property may be taken for his liability as stockholder. *Stedman v. Eveleth*, (6 Met.) 47 Mass. 114; *Gray v. Coffin*, (9 Cush.) 63 id. 192.

Stockholder holding by absolute transfer liable, although held in fact as collateral. *Johnson v. Somerville*, (15 G.) 81 Mass. 216; *Bank v. Burnham*, (11 Cush.) 65 id. 183.

Where creditor recovers a single judgment upon two demands, and stockholder is liable for one only, he may levy his execution to that extent only. *Stedman v. Eveleth*, (6 Met.) 47 Mass. 114.

A retransfer, pursuant to an agreement at the time of the original transfer, terminates stockholder's liability, although made for that purpose. *Bank v. Burnham*, (11 Cush.) 65 Mass. 183.

A stockholder held liable, who was such when the debt was contracted, though he had ceased to be before paid. *Id.*; *Johnson v. Somerville*, (15 Gray) 81 id. 216.

Stockholder liable, who is such when liability of company enforced, though not such when debt contracted. *Curtis v. Harlow*, (12 Met.) 53 Mass. 3.

A person who has signed the subscription paper is liable for a debt contracted by the association, although the subscription was never fully made up, and the defendant never signed the articles of association, or had a certificate for his stock. *R. v. Pearson*, 128 Mass. 445.]

§ 62. No stockholder or officer in such corporation shall be held liable for its debts or contracts, unless a judgment is recovered against it, and it neglects for thirty days after demand made on execution to pay the amount due, with the officer's fees, or to exhibit to him real or personal estate of the corporation subject to be taken on execution, sufficient to satisfy the same, and the execution is returned unsatisfied.

See § 60, ante. Creditor may file bill in equity. § 64, post. Suits may be defended by stockholders. § 70, post.

[As to the sufficiency of a demand under above section, see *Bank v. Manf. Co.*, 127 Mass. 563.

The plaintiffs' right to maintain the bill is not affected by their having proved their claims in bankruptcy against the corporation and received dividends thereupon. *Id.*

The discharge in bankruptcy of a director or stockholder, under proceedings begun before an action is brought against the corporation, is no defense to such a bill. *Id.*

Where a director or stockholder is an indorser upon a note of the corporation, his discharge in bankruptcy for all liability as indorser upon the note is no defense to a bill to enforce a liability for the same note of the directors or stockholders. *Id.*

Neither officers nor stockholders can be charged without a strict compliance with the provisions, requiring a judgment against the corporation and a demand and return upon the execution; and these are not excused by the bankruptcy of the corporation, and the plaintiff's claim against its estate. *Coburn v. Boston Co.*, (10 G.) 76 Mass. 243; *Johnson v. Somerville*, (15 G.) 81 id. 216; *Folger v. Ins. Co.*, 99 id. 267; *Priest v. Man. Co.*, 115 id. 380; *Bank v. Manf. Co.*, 127 id. 563.

Judgment against the corporation is conclusive evidence of the debt. *Hawes v. Pet. Co.*, 101 Mass. 385; *Thayer v. Lithog. Co.*, 108 id. 523.

Oral evidence admissible to show judgment for debt at time of officer's default. *Norfolk v. Amer. Co.*, 108 Mass. 404.

Judgment upon scire facias suffices. *Id.*

The requirement as to recovering judgment, etc., applies to corporations organized under general laws. *Peele v. Phillips*, (8 Allen) 90 Mass. 86.]

§ 63. The clerk or other officer having charge of the records of any such corporation against which judgment has been so recovered and execution so issued and returned unsatisfied, upon reasonable request of the judgment creditor or of his attorney, shall furnish him a certified list of the names of all persons who were officers and stockholders in such corporation at the time of the commencement of the suit in which judgment was recovered.

See ch. 171, § 48. Duties of clerk. § 26, ante. Treasurer to keep list of stockholders. Ch. 105, § 21. Penalty for refusing to give certificates. § 83, post.

§ 64. After the execution is so returned, any creditor may file a bill in equity in behalf of himself and all other creditors of the corporation, against it and all persons who were stockholders therein at the time of the commencement of the suit in which such judgment was recovered, or against all the officers liable for its debts and contracts, for the recovery of the sums due from the corporation to himself and the other creditors, for which the stockholders or officers may be personally liable by reason of any act or omission on its part or that of its officers or any of them, setting forth the judgment and proceedings thereon, and the grounds upon which it is expected to charge the stockholders or officers personally.

See § 62, ante. Suit in equity not to abate, when. §§ 67-69, post.

§ 65. Such sums as may be decreed to be paid by the stockholders in such suit in equity shall be assessed upon them in proportion to the amounts of stock held by them respectively at the time when the suit in which said judgment was recovered was begun; but no stockholder shall be liable to pay a larger sum than the amount of stock held by him at that time at its par value.

See § 43, ante. Liability of stockholders. § 61, ante.

§ 66. The estates and funds in the hands of executors, administrators, guardians, or trustees, shall be liable to no greater extent than the testator, intestate, ward, or person interested in the trust fund would have been, if living and competent to act and hold the stock in his own name.

See § 61, ante.

§ 67. If any one of the defendants dies during the pendency of such a suit in equity, it shall not abate thereby; and his estate in the hands of his executor or administrator shall be liable to the same extent as he



Creditors' bills; penalties for refusal to file certificates; fees — P. S., ch. cvi, §§ 68-71, 81-84.

would be if living. Such executor or administrator may voluntarily appear and become a party to the suit, or may be summoned by the plaintiff.

See § 64, ante; §§ 68, 69, post.

§ 68. After such a suit in equity has been commenced, the plaintiff shall not dismiss the same without an order of court, and such notice to other creditors as the court may deem reasonable under the circumstances.

See §§ 64, 67, ante.

§ 69. No such suit in equity shall be abated by reason of the non-joinder of persons liable as defendants, unless the plaintiff, after being notified by plea or answer of the existence of such persons, unreasonably neglects to make them parties.

See §§ 64, 67, 68, ante.

§ 70. In all suits against corporations established by the laws of this commonwealth, when it appears to the court that one of the objects of the suit is to obtain a judgment against the corporation in order to enforce an alleged liability of a person who has been or is a stockholder or officer thereof, any such stockholder or officer may be permitted, on petition, to defend said suit.

See ch. 105, § 4, subd. 1, and cross-references. Not liable until judgment rendered. § 62, ante.

§ 71. The court in such case may require of the person so taking upon himself the defense of the suit, or of some person in his behalf, a bond with sufficient surety or sureties, conditioned to pay to the plaintiff all costs which may accrue and be taxed to him after the filing of said petition.

Costs in civil actions. Ch. 198, § 33. Costs in quo warranto. Ch. 186, § 24.

§ 81. Every corporation which is subject to this chapter, and which omits to cause to be filed any certificate or return required by sections fifty-four, fifty-six, or fifty-seven, shall forfeit two hundred dollars, to be recovered by action of tort, brought in the name of the commonwealth in the county of Suffolk or in the county in which the corporation is established; and its president, treasurer, and directors for the time being shall in addition be jointly liable in a like sum for such omission or neglect; and all sums forfeited by a corporation under this chapter may also be collected by information in equity, brought in the supreme judicial court in the name of the attorney-general, at the relation of the commissioner of corporations; and upon such information the court may issue an injunction restrain-

ing the further prosecution of the business of the corporation named therein until the sums so forfeited are paid with interest and costs, and until the returns required by this chapter are made.

See Acts of 1896, ch. 369. Certificates and returns. § 54, ante, and cross-references.

§ 82. All informations under the provisions of the preceding section may be brought in the county of Suffolk.

See Acts of 1896, ch. 369.

§ 83. If an officer unreasonably refuse to give the certificate mentioned in section sixty-three, or wilfully gives a false certificate, he shall be liable for double the amount of all damages occasioned by such refusal or false certificate, to be recovered in an action of tort.

See ch. 161, § 73.

§ 84. Fees shall be paid for filing and recording the certificates required by this chapter to be filed with the secretary of the commonwealth as follows:—

For filing and recording the certificates required by sections twenty-one and twenty-two, including the issuing the certificate of organization by the secretary, one-twentieth of one per cent. of the amount of the capital stock as fixed by the agreement of association; but not less in any case than five dollars, nor more than two hundred dollars.

For filing and recording the certificate required by section fifty-six, one-twentieth of one per cent. of the amount by which the capital is increased; but the amount so to be paid shall not, when added to the amount previously paid for filing and recording certificates under sections twenty-one, twenty-two, and fifty-six, exceed in any case two hundred dollars.

For filing and recording the certificates required by sections fifty-one and fifty-two, one-twentieth of one per cent. of the amount of the capital stock of the corporation.

For filing and recording the certificate required by section fifty-four, five dollars.

For filing and recording any other certificate required by the provisions of this chapter, one dollar.

For official copies of any of the records mentioned in this chapter, the rates now fixed by law for copies of similar records furnished by the secretary of the commonwealth.

Above section is amended by L. 1896, at p. 62. Certain corporations subject to provisions of above section. Acts of 1896, ch. 369. The second clause of above section is amended by Acts of 1896, ch. 523. See § 21, ante. Fees for recording certain certificates. Acts of 1895 ch. 169. Same. Acts of 1896, ch. 523.

**Part III. Of Courts and Judicial Officers and Proceedings in Civil Cases.**

- Tit. I. Of courts and judicial officers.  
 II. Of actions and proceedings therein.  
 IV. Of certain writs and proceedings in special cases.  
 VI. Of costs.

**TITLE I. OF COURTS AND JUDICIAL OFFICERS.****CHAPTER CLVII.****Of Courts of Insolvency.**

- Sec. 127. Corporations may petition by authorized officer.  
 128. Proceedings similar to those in case of a person.  
 129. Claims provable before last dividend.  
 130. Schedules; duties, etc., of officers; oath.  
 134. Void preferences.  
 135. No allowance or discharge to corporations.  
 136. Proceedings against corporation.

**INSOLVENT CORPORATIONS,**

§ 127. Any corporation created by authority of this State, except railroad and banking corporations, may apply by petition signed by an officer duly authorized by a vote of a majority of the corporators present and voting at a legal meeting called for the purpose, to the judge for the county where the corporation has its principal place of business, setting forth its inability to pay its debts, and its willingness to assign all its estate and effects for the benefit of its creditors, and praying that such proceedings may be had in the premises as are hereinafter provided. The judge shall thereupon forthwith issue a warrant, as in the case of an application by a debtor under section sixteen, but requiring the notice given by the messenger to state further that the making of any contract by the corporation is forbidden by law.

See §§ 128-136, post. Corporation dissolved on petition. Ch. 105, §§ 40 et seq. Insolvency of foreign corporation. Acts of 1890, ch. 321.

[A court of chancery has, in the absence of fraud or breach of trust, no peculiar jurisdiction over corporations to restrain them from violating their charters, or to decree a dissolution, appoint a receiver, and restrain the further prosecution of their business, in case of insolvency. *Treadwell v. Salisbury*, (7 Gray) 73 Mass. 393; *Folger v. Ins. Co.*, 99 id. 267; *Pond v. R. R.*, 130 id. 194.]

Where a corporation mortgages property to a trustee to secure the payment of bonds, and then becomes insolvent, holders of corporate notes secured by certain of the bonds as collateral cannot enforce their rights in the insolvency court; therefore, they may maintain a suit in equity. *Bank v. Green*, 150 Mass. 317; s. c., 23 N. E. Rep. 103.

Priority of claims against a trust fund belonging to an insolvent corporation determined. *Am. Loan & Trust Co. v. N. W. Guaranty Loan & Trust Co.*, 166 Mass. 337; s. c., 44 N. E. Rep. 340.]

§ 128. Thereupon like proceedings shall be had, with like powers, duties, and privileges of the judge, register, messenger, assignee, and creditors, as are hereinbefore provided upon the petition of a debtor, except as hereinafter mentioned.

§ 129. Claims on account of bills of exchange, indorsements, money due on bottomry or respondentia bonds, or paid upon indorsements, or as surety, may be proved against an insolvent corporation before the making of the last dividend, in like manner as against the estate of an insolvent debtor before the making of the first dividend.

§ 130. The schedules to be furnished shall be prepared and furnished by the treasurer or other financial officer of the corporation, with such assistance from the other officers as he may require; and all the provisions of this chapter which apply to the debtor or set forth his duties in regard to executing papers, submitting to examinations, disclosing, making over, secreting, concealing, conveying, assigning, or paying away his money or property, shall in like manner, and with like force, effect, and penalties, apply to each and every officer of the corporation in relation to the same matters concerning the corporation, and the money and property thereof. And said officers shall at the second meeting severally make and subscribe an oath in substance as follows:

I, . . . . . (president, etc., or treasurer, etc.), do swear that I verily believe the account of the creditors of the corporation, contained in the schedule signed by A. B., and now on file in court, is in all respects just and true; that I do verily believe that all the property and estate of said corporation, and all its books of account and papers, have been delivered to the messenger or the assignee; and that if any goods or estate not so delivered hereafter come to my knowledge, I will faithfully and diligently apprise the assignee thereof. And I do further swear that, to the best and utmost of my knowledge, information, and belief, there is no part of the estate or effects of said corporation made over or disposed of in any manner in fraud of the laws relating to insolvency or of the creditors of said corporation.

[Under above section and § 135, the court may order the officers of an insolvent corporation to be examined at any time. *Davis v. Bunker*, 168 Mass. 82; s. c., 46 N. E. Rep. 405.]

§ 134. All payments, conveyances, and assignments which are fraudulent and void by sections ninety-six\* and ninety-eight\* when made by a debtor, shall in like manner, to the like extent, and with like remedies, be fraudulent and void when made by a corporation which is subject to the provisions of this chapter.

§ 135. An allowance or discharge shall not be granted to a corporation, nor to any person as officer or member thereof.

See § 130, ante, and note.

§ 136. (As amended, Acts of 1897, ch. 124.) If a corporation, whether domestic or subject to the provisions of chapter three hun-

\* Relating to frauds in preferences by insolvents.

Venue; attachment of shares — P. S., ch. clxi, §§ 8, 36, 37, 71.

dred and twenty-one of the Acts of the year eighteen hundred and ninety, whose goods or estate are attached on mesne process in a civil action founded on a contract for the sum of one hundred dollars or upwards, which is in its nature provable under this chapter, does not within fourteen days from the return day of the writ, if the term of the court to which the process is returnable so long continues, or on or before the last day of the term if the same sooner ends, dissolve the attachment in the manner provided by law, or if a corporation moves any part of its property from the State, with intent to defraud its creditors, or conceals any part of its property to prevent its being attached or taken on legal process, or procures its property to be attached or taken on any legal process, or if a corporation makes a fraudulent payment, conveyance, or transfer of its property or any part thereof, or stops or suspends and does not resume payment of its commercial paper within a period of fourteen days, or if a corporation makes a fraudulent payment, conveyance, or transfer of its property or any part thereof, any of its creditors whose claims provable against its estate amount to one hundred dollars may, within ninety days thereafter, apply by petition to the judge for the county in which the corporation is established, setting forth the facts and the nature of their claims, verified by oath and praying that its estate may be seized and distributed according to the provisions of this chapter; and thereupon, after notice of the presentment of the petition given to the corporation by a copy thereof served on its president, treasurer, or clerk, thirty days at least before the return day of the notice, and a hearing of the petitioners and corporation, or after default of the corporation to appear at the time and place in the notice appointed, if the facts set forth in the petition appear to be true, the judge shall forthwith issue his warrant to take possession of the estate of the corporation; and such further proceedings shall be had thereon as upon a warrant issuing upon the petition of a corporation under section one hundred and twenty-seven.

Franchise, how attached on mesne process. Ch. 105, § 30.

## TITLE II. OF ACTIONS AND PROCEEDINGS THEREIN.

Ch. 161. Of the commencement of actions and the service of process.

165. Of actions which survive.

167. Of pleadings and practice.

169. Of evidence.

171. Of judgment and execution.

## CHAPTER CLXI.

### Of the Commencement of Actions and the Service of Process.

Sec. 8. Action brought where when certain corporations are parties.

Sec. 36. Summons, how served on business corporations.

37. Service in suits in equity.

71. Shares in corporations, how to be attached.

72. Same.

73. Penalty on recording officer for refusal or false certificate.

### VENUE OF ACTIONS.

§ 8. When a corporation, other than a county or the city of Boston, is a party to an action other than those mentioned in the preceding section, such action may be brought as follows, to-wit,—

\* \* \* \* \*  
Third. When one of the parties is a corporation of any other description than is before mentioned in this section, in any county in which such corporation has an established or usual place of business, or has held its last annual meeting, or usually holds its meetings, or, if the other party is a natural person, in the county where such person lives.

See ch. 105, § 4, subd. 1, and cross-references.

§ 36. In suits against a corporation other than those mentioned in the preceding section\* the summons shall be served by leaving the original or copy, as the case may be, with the clerk, cashier, secretary, agent, or any other officer having charge of its business; and if there is no such officer found within the county, the summons may be served on any member of the corporation.

See ch. 105, § 4, subd. 1, and cross-references.

§ 37. Every writ of original summons or subpoena issued in suits in equity shall be served in the same manner, and the same number of days, at least, before the return day, as would be required for the service of an original writ in an action at law between the same parties.

See ch. 105, § 4, subd. 1, and cross-references.

### ATTACHMENT OF SHARES IN CORPORATIONS.

§ 71. The share or interest of a stockholder in a corporation organized under authority of this commonwealth, or under the laws of the United States and located or having a general office in this commonwealth, may be attached by leaving an attested copy of the writ, (without the declaration,) and of the return of the attachment, with the clerk, treasurer, or cashier of the company, if there is such officer; otherwise with any officer or person who has at the time the custody of the books and papers of the corporation.

See ch. 105, § 4, subd. 1, and cross-references. Shares taken on execution. Ch. 171, § 45.

[Shares in a corporation may be attached under the statute, although the charter forbids the transfer of shares for a certain time. *Nesmith v. Bank*, (6 Pick.) 23 Mass. 328.

The statute relating to the attachment, or sale under an execution, of shares of stock, does not

\* Municipal and religious.



Attachment of shares; verification of pl'd'gs — P. S., ch. clxi, §§ 72, 73; ch. clxvii, §§ 86, 87.

define what shall be an attachable interest in stock, but leaves that to be determined by the common law, or some other statute. *Hall v. Cory*, 129 Mass. 435; *Sibley v. Bank*, 133 id. 515.

Shares issued to be for the benefit of A., and which had been assigned to A., but not transferred on the books of the corporation, cannot be attached by B.'s creditor. *Sibley v. Bank*, 133 Mass. 515.]

§ 72. A share or interest so attached, with all the dividends thereafter accruing thereon, shall, except as is otherwise provided in section twenty-four of chapter one hundred and five, be held as security to satisfy the final judgment in the suit, in like manner as other personal estate is held.

See § 71, ante, and cross-references.

§ 73. If the officer having a writ of attachment against such stockholder exhibits the writ to the officer of the company who is appointed to keep a record or account of the shares or interest of the stockholders therein, and requests a certificate of the number of shares or amount of the interest held by the defendant in the suit, such officer of the company shall give such certificate to the officer holding the writ. If he unreasonably refuses to do so, or if he wilfully gives a false certificate thereof, he shall be liable for double the amount of all damages occasioned by such refusal or false certificate, to be recovered in an action of tort, unless the judgment is satisfied by the original defendant.

See ch. 106, § 83.

## CHAPTER CLXV.

### Of Actions which Survive.

Sec. 26. Death or removal of treasurer of corporation not to abate action.

§ 26. An action on a note, bond, contract, or other liability made to or with the treasurer of ..... a ..... corporation, \* \* \* may, after his removal, resignation, or death, be commenced, or if before commenced may be prosecuted by his successor, as it might have been by the person with whom the contract was made.

See ch. 105, § 4, subd. 1, and cross-references.

## CHAPTER CLXVII.

### Of Pleadings and Practice.

Sec. 86. Verifications and affidavits when corporation is a party.

87. Fact that a party is a corporation to be taken as admitted, unless, etc.

§ 86. When a party to a suit or proceeding under this chapter is a corporation, all precepts, answers, replications, or other papers requiring the signature or oath of the party, may be signed or sworn to in behalf of the corporation by some officer or agent thereunto specially authorized.

See ch. 105, § 4, subd. 1, and cross-references.

§ 87. When it appears from the papers or pleadings in a suit at law or in equity that

any party sues or is sued as ..... a corporation, such fact shall be taken as admitted unless the party controverting the same files in court, within ten days from the time allowed for answer, a special demand for proof of such fact.

See ch. 105, § 4, subd. 1, and cross-references.

[A party who contracts with another as a corporation is estopped to deny its corporate existence. *Inst. v. Harding*, (11 Cush.) 65 Mass. 285. See also *Bank v. Suk Co.*, (3 Met.) 44 id. 282; *Bank v. Jenks*, (7 Met.) 48 id. 592.

Query, whether the rule is not confined to a case where there is some evidence that the plaintiff is a corporation de facto. *Provident v. Burnham*, 128 Mass. 458.

Proof of a corporation de facto is required within the rule, if the plaintiff is a foreign corporation or a national bank organized in another State. *Williams v. Cheney*, (3 Gray) 69 Mass. 215; *Bank v. Lee*, 112 id. 521; *Bank v. Glendon Co.*, 120 id. 97; *Ins. Co. v. Frothingham*, 122 id. 391; *Bank v. McDonald*, 130 id. 264.

In an action by an indorsee of a note against the maker, who has been described by the payee by a corporate name, proof of the execution of the note is prima facie proof of the existence of the corporation. *Topping v. Bickford*, (4 Allen) 86 Mass. 120; *Bank v. Van Nostrand*, 106 id. 559.

Long exercise of corporate powers will authorize the admission of oral evidence of the existence and loss of a charter. *Dillingham v. Snow*, 5 Mass. 547; *Stockbridge v. West Stockbridge*, 12 id. 400.

In an action against a corporation organized under a general act, its existence may be proved by the certificate of organization, and if the original is in the possession of the corporation or its assignees in bankruptcy, secondary evidence is admissible. *Chamberlain v. Huguenot Co.*, 118 Mass. 522. See also *Thayer v. Ins. Co.*, (10 Pick.) 27 id. 326; *Bank v. Silk Co.*, (3 Met.) 44 id. 282; *Samuels v. Borowscale*, 104 id. 207.

Where receivers of a foreign corporation, appointed in the foreign jurisdiction, claimed the funds attached by trustee process, after judgment for the plaintiff, and charging the trustees, and affirmation thereof, they cannot have a rehearing to show that a decree was made dissolving the corporation, which they have omitted to prove. *Taylor v. Ins. Co.*, (14 Allen) 96 Mass. 353.

A corporation is estopped to deny the truth of its own certificate of organization. *Dooley v. Glass Co.*, (15 Gray) 81 Mass. 494. And a member is so estopped as against the corporation. *Hampshire v. Franklin*, 16 Mass. 87.

Above section did not apply where an answer containing a general denial was filed and ten days had elapsed before the passage of the statute. *Bedstead Co. v. Darling* 133 Mass. 358.

Before the enactment of the above statute (1881) an answer denying each and every allegation, etc., would put a plaintiff corporation to proof of its corporate existence. *Bank v. Van Nostrand*, 106 Mass. 569; *Mosler v. Potter*, 121 id. 89; *Deacons v. Smith*, id. 90, note; *Ins. Co. v. Frothingham*, 122 id. 391; *Bedstead Co. v. Darling*, 133 id. 358.

In an action before the enactment of above section (1881), against "The Adams Express Co." where the declaration alleged that the defendants were a "company having a place of business" in this commonwealth, and the answer denied each and every allegation, etc., the plaintiff was bound to prove corporate existence, if the defendants denied it at the trial. *Gott v. Express Co.*, 100 Mass. 320.

The incorporation of defendants, sued as a corporation, might have been denied after general acceptance and affidavit of merits. *Greenwood v. R. R. Co.*, (10 Gray) 76 Mass. 373.

Formerly nul tiel corporation might have been pleaded in bar as well as in abatement. *Soc. v. MacComber*, (3 Met.) 44 Mass. 235.]



Judgment and execution — P. S., ch. clxix, § 68; ch. clxxi, §§ 19, 30, 44-50.

## CHAPTER CLXIX.

### Of Evidence.

Sec. 68. Acts of incorporation deemed public acts.

§ 68. All acts of incorporation shall be deemed public acts, and, as such, may be declared on and given in evidence.

See ch. 105, § 4, subd. 1, and cross-references. Books of corporation evidence. Ch. 203, § 62.

[Prior to enactment of above section courts took judicial notice of acts creating public corporations, but acts creating private corporations and foreign acts of incorporation had to be proved. *Livery Co. v. Watson*, 10 Mass. 91.

Long exercise of corporate powers will authorize the admission of oral evidence of the existence and loss of a charter. *Dillingham v. Snow*, 5 Mass. 547; *Stockbridge v. West Stockbridge*, 12 id. 400.]

## CHAPTER CLXXI.

### Of Judgment and Execution.

Sec. 19. Remedy when property, etc., of a stockholder taken on execution against a corporation is recovered back.

30. Levy on property of a corporation, how made.

44. Proceeds, how disposed of when there have been successive attachments.

45. Shares of stock may be taken on execution.

46. Proceedings.

47. Same.

48. Officer of corporation to disclose the share held by debtor.

49. Officer of corporation to give new certificates to purchaser.

50. Purchaser entitled to dividends after attachment.

§ 19. If an execution against a corporation is satisfied in whole or in part by service or levy on the person or property of a member thereof, and the property levied on or damages for service or levy are subsequently recovered by such member from the officer or judgment creditor, the creditor may have a writ of scire facias on his judgment, and shall thereupon be entitled to a new execution for the sum remaining justly and equitably due to him.

See ch. 105, § 4, subd. 1, and cross-references.

§ 30. Executions against corporations, when levied upon any corporate property, shall be levied in the same manner as other executions are levied, except in the cases provided for in chapters one hundred and five, one hundred and eighteen, and one hundred and nineteen.

See ch. 105, §§ 31-40.

§ 44. If an attachment or seizure on execution is made of a share in an incorporated company, or of any other property which may be attached without taking and keeping the exclusive possession thereof, and if the same property is subsequently attached or taken in execution by another officer, he shall give notice thereof to the officer who makes the sale under the first attachment or seizure; and if the latter without such notice pays to the debtor the balance of the proceeds of the sale, he shall not be liable

therefor to the person claiming under such subsequent attachment or seizure.

LEVY, ETC., ON SHARES IN CORPORATIONS.

§ 45. The share or interest of a stockholder in a corporation established under the authority of this State, or under the laws of the United States and located or having a general office in this State, may be taken on execution and sold as herein-after provided.

See ch. 161, § 71. Proceedings. §§ 46, 47, post.

§ 46. If the property has not been attached in the same suit, the officer shall leave an attested copy of the execution with the clerk, treasurer, or cashier of the company, if there is any such officer, otherwise with any officer or person having custody of the books and papers of the corporation; and the property shall be considered as seized on execution when the copy is so left, and shall be sold in like manner as goods and chattels.

§ 47. If the share is already attached in the same suit, the officer shall proceed in seizing and selling it on the execution in the same manner as in selling goods and chattels.

§ 48. The officer of the company who is appointed to keep a record of account of the shares or interest of the stockholders therein shall, upon the exhibiting to him of the execution, be bound to give a certificate of the number of shares or amount of the interest held by the judgment debtor, in like manner and upon the like penalty as is prescribed in chapter one hundred and sixty-one upon the exhibiting to him of a writ of attachment.

See ch. 105, § 23, and cross-references. Ch. 106, § 63.

§ 49. An attested copy of the execution and of the return thereon shall within fourteen days after the sale be left with the officer of the company whose duty it is to record transfers of shares; and the purchaser shall thereupon be entitled to a certificate or certificates of the shares bought by him, upon paying the fees therefor and for recording the transfer.

See § 48, ante.

§ 50. If the share or interest of the judgment debtor is attached in the suit in which the execution issued, the purchaser shall be entitled to all the dividends which have accrued after the attachment.

See ch. 105, § 36.

## TITLE IV. OF CERTAIN WRITS AND PROCEEDINGS IN SPECIAL CASES.

Ch. 183. Of the trustee process.  
186. Of quo warranto, etc.

## CHAPTER CLXXXIII.

### Of the Trustee Process.

Sec. 16. How corporations may answer.

§ 16. Corporations summoned as trustees may appear and answer by their cashier,

Trustee process; quo warranto — P. S., ch. clxxxiii, § 16; ch. clxxxvi, §§ 17-24.

treasurer, secretary, or such other officer as they shall appoint or as the court or justice shall require to attend for that purpose. The answer and examination on oath of such officers or persons shall be received as the answer and examination of the corporation.

See ch. 105, § 4, subd. 1, and cross-references.

[Since enactment of above section, a foreign corporation having a usual place of business here may be so summoned, and the process may be served upon the treasurer. *Bank v. Huntington*, 129 Mass. 444.

As to service upon resident attorney, see *Thayer v. Tyler*, (10 Gray) 76 Mass. 164.]

## CHAPTER CLXXXVI.

### Of Quo Warranto.

Sec. 17. Who may apply for leave to file information.

18. When application may be made, etc.
19. Hearing on application.
20. Filing of information, and notice.
21. Issue of injunction.
22. Attorney-general may appear, etc.
23. Judgment when attorney-general does not appear.
24. When defendant may recover costs.
25. Preceding sections not to affect certain duties and rights.

§ 17. Any person whose private right or interest has been injured or is put in hazard by the exercise by a private corporation, or by persons claiming to be a private corporation, of a franchise or privilege not conferred by law, whether such person is a member of such corporation or not, may apply to the supreme judicial court for leave to file an information in the nature of a quo warranto.

Notice of petition to be given. Ch. 2, § 5.

[Under above section, an information without the intervention of the attorney-general will not lie against a corporation organized under the act of 1870, if the forms of law have been complied with, on the ground that the certificate of the secretary of the commonwealth was obtained by fraud, or that the stock was issued below par, or the construction commenced before all the stock was subscribed. *Hastings v. R. R.*, (9 Cush.) 63 Mass. 596; *Rice v. Bank*, 126 id. 300. See also *Bridge v. Warren Bridge*, (7 Pick.) 24 id. 344; *Folger v. Ins. Co.*, 99 id. 267.

Or generally, for any act which does not put in hazard the petitioner's private right or interest, as distinguished from the common right or interest. *Goddard v. Smithett*, (3 Gray) 69 Mass. 116.

Upon an information in the nature of a quo warranto, which has in our practice superseded the ancient writ of quo warranto, where the object is to declare the charter of a corporation forfeited a judgment of ouster is appropriate. *Atty.-Gen. v. Salem*, 103 Mass. 138; *Campbell v. Talbot*, 132 id. 174. Such a judgment excludes the corporation from the right to exercise its franchises without further action by the legislature. *Campbell v. Talbot*, 132 Mass. 174; *Heard v. Talbot*, (7 Gray) 73 id. 113.

An information to dissolve a corporation may be prosecuted either under the authority of the legislature or by the attorney-general in behalf of the commonwealth. *Comm. v. Ins. Co.*, 5 Mass. 230; *Goddard v. Smithett*, (3 Gray) 69 id. 116.

Where a corporation or an individual does acts, without right, which destroy or impair rights or privileges under the control and care of the commonwealth, this is a public nuisance, which the attorney-general may restrain and prevent by information in equity. *Atty.-Gen. v. Cambridge*, (16 Gray) 82 Mass. 247; *Atty.-Gen. v. Aqueduct*, 133 id. 361.

The court has no jurisdiction of an information in equity by the attorney-general against a private trading corporation whose proceedings are not shown to have injured or endangered any public or private rights, and are objected to solely on the ground that they are not authorized by the act of incorporation, and are, therefore, against public policy. *Atty.-Gen. v. Ice Co.*, 104 Mass. 239.]

§ 18. The application may be made and heard at a law or jury term in any county where the court is in session, or before a justice of the court in vacation.

§ 19. The court shall take order for a summary hearing of the parties, and if there appears probable cause to believe that the party complained of has exercised a franchise or privilege not conferred by law, and that thereby the private right or interest of the complainant has been injured or is put in hazard, leave shall be granted to file the information.

§ 20. The information shall be filed in the county where the defendant has its principal place of business. A copy of the information, with an order of notice returnable and to be served when and as the court may direct, shall be served on the defendant and on the attorney-general.

§ 21. The court, when leave is given to file such information, or at any time before final judgment, may issue a writ of injunction restraining the defendant and its managers, servants, and agents from exercising the franchise or privilege in question until the further order of the court.

§ 22. The attorney-general, when he has good reason to believe there has been a usurpation of a franchise or privilege not conferred by law, may intervene, and demand a judgment of fine and forfeiture. In such case he shall have the control of all future proceedings, and the court shall enter such judgment as the principles of the common law may require, but the complainant shall no longer be responsible for costs.

See ch. 106, § 1.

§ 23. If the attorney-general has not intervened, and it is determined that the defendant has exercised a franchise or privilege not conferred by law, no judgment of forfeiture shall be entered, but the judgment shall be that the corporation, or the persons claiming to be a corporation, be perpetually excluded from such franchise or privilege, and that the directors, managers, or agents, by whom the usurpation was made, pay the costs to be recovered by the complainant.

§ 24. If it is adjudged that the defendant has not exercised a franchise or privilege not conferred by law, the defendant shall re-

Costs, etc.; fraud, etc.—P. S., ch. cxviii, § 33; ch. cciii, §§ 54-57, 62; ch. ccxiii, § 26.

cover against the complainant the same costs as are allowed in actions at law.

See ch. 106, § 71.

§ 25. Nothing contained in this chapter shall affect the duty of the attorney-general to proceed ex officio in all cases in which he might have heretofore so proceeded by law, nor to deprive any person of the right to file an information respecting the election or admission of an officer or member of a corporation.

#### TITLE VI. OF COSTS.

##### CHAPTER CXCVIII.

##### Of Costs in Civil Actions.

Sec. 33. Corporation entitled to costs for travel.

§ 33. When a corporation is entitled to costs, an allowance shall be made for travel as in other cases, and the travel shall be computed from the place where the corporation is situated, if it is in its nature local, otherwise from the place in which its business is chiefly or commonly transacted.

See ch. 105, § 4, subd. 1, and cross-references. Ch. 106, § 71.

#### Part IV. Of Crimes, Punishments, etc.

- 11t. I. Of crimes and punishments.
- II. Of proceedings in criminal cases.

#### TITLE I. OF CRIMES AND PUNISHMENTS.

##### CHAPTER CCIII.

##### Of Offenses against Property.

Sec. 54. Issuing, etc., certificate of stock, bond, etc., beyond amount authorized.

55. Fraudulently issuing or transferring certificate of stock.

56. Making false entry, etc., in book of a corporation.

57. Books of corporation; evidence.

62. Fraudulently using name, credit or money of corporation.

§ 54. An officer, agent, clerk, or servant of a corporation, or any other person, who issues or signs with intent to issue any certificate of stock in a corporation, or who issues, or signs or indorses with intent to issue, any bond, note, bill, or other obligation or security in the name of such corporation, beyond the amount authorized by law or limited by the legal votes of such corporation or its proper officers, or negotiates, transfers, or disposes of such certificate with intent to defraud, shall be punished by imprisonment in the State prison not exceeding ten years, or in the house of correction not exceeding one year.

Increase of capital stock. Ch. 106, § 34.

§ 55. An officer, agent, clerk, or servant of a corporation, or any other person, who fraudulently issues or transfers a certificate of the stock of a corporation to a person not

entitled thereto, or fraudulently signs such certificate, in blank or otherwise, with the intent that it shall be so issued or transferred by himself or any other person, shall be punished by imprisonment in the State prison not exceeding ten years, or in the house of correction not exceeding one year.

Transfer of shares of stock. Ch. 106, § 30.

§ 56. (As amended by L. 1885, ch. 223.) An agent, clerk, servant or officer of a person, firm or corporation who makes a false entry or omits to make a true entry in any book of such person, firm or corporation, with intent to defraud, and any person whose duty it is to make in any book of a corporation a record or entry of the transfer of stock, or of the issuing or cancelling of certificates thereof, or of the amount of stock issued by such corporation, who, with intent to defraud, omits to make a true record or entry thereof, shall be punished by imprisonment in the State prison not exceeding ten years, or in the house of correction not exceeding one year.

See ch. 106, § 26.

§ 57. On the trial of a person for an offense under the three preceding sections, the books of any corporation to which such person had access or the right of access shall be admissible in evidence.

See ch. 169, § 63.

§ 62. An officer, agent, clerk, or servant of a corporation organized or doing business in this commonwealth, who in any manner wilfully uses the name of such corporation, or his own name as such officer, agent, clerk, or servant, to obtain money upon the credit of such corporation for his own use or benefit, without authority from such corporation, or who fraudulently lends, invests, or appropriates the money or disposes of the property of such corporation, or converts the same to his own use, shall be punished for each offense by imprisonment in the State prison not exceeding ten years.

See ch. 106, § 23.

#### TITLE II. OF PROCEEDINGS IN CRIMINAL CASES.

- Ch. 213. Of indictments, prosecutions, etc.
- 215. Of judgment and execution.

##### CHAPTER CCXIII.

##### Of Indictments, Prosecutions, etc.

Sec. 26. New indictment against corporation may be found within one year after abatement of former one.

§ 26. If an indictment duly found and returned within the time limited by law against a corporation to recover a pecuniary penalty is abated or otherwise



Indictment; default of corporation — P. S., ch. ccxv, §§ 30, 31.

avoided or defeated by reason of any matter of form, or if after a verdict against such corporation judgment is arrested, or if a judgment against such corporation is reversed on writ of error, a new indictment for the same cause may be found and filed within one year after the abatement of the former indictment or the reversal of the judgment as aforesaid.

See ch. 105, § 4, subd. 1, and cross-references.

[Where the charter of a corporation to build a toll-bridge allows three years for its completion, and prescribes that it shall be built with draws and piers, and the corporation erects the bridge without piers, and takes toll, it is indictable, although the three years have not elapsed. *Comm. v. Bridge*, (9 Pick.) 26 Mass. 142.

A corporation may be indicted for a misfeasance as well as a non-feasance. *Lumbard v. Stearns*, (4 Cush.) 58 Mass. 60; *Comm. v. Bridge*, (2 Gray) 68 id. 339.]

## CHAPTER CCXV.

### Of Judgment and Execution.

Sec. 30. Corporation failing to appear may be defaulted.

31. Warrant of distress may be issued.

§ 30. When a corporation indicted under the statutes of this State fails to appear after being duly served with process, its default shall be recorded, the charges in the indictment taken to be true, and judgment shall be rendered accordingly.

See ch. 105, § 4, subd. 1, and cross-references.

§ 31. When judgment is rendered upon any such indictment against a corporation, the court may issue a warrant of distress to compel the payment of the penalty prescribed by law, together with costs and interest.

See ch. 105, § 29.

## LEGISLATIVE ACTS AND RESOLVES RELATING TO CORPORATIONS PASSED SUBSEQUENTLY TO 1882.

### Acts of 1883.

Ch. 100. Requiring corporations to make returns of the acceptance or failure to accept certain acts and resolves.

### Acts of 1884.

Ch. 229. Relating to the transfer of stock.

330. Concerning foreign corporations having their usual place of business in this commonwealth.

### Acts of 1885.

Ch. 310. Relating to change of business by corporations.

### Acts of 1886.

Ch. 173. Relating to providing means of communication between rooms in factories.

174. Relating to the annual collection of statistics of manufactures.

209. Authorizing corporations to issue special stock to be held by their employes only.

260. Relating to reports of accidents in factories.

### Acts of 1887.

Ch. 225. Requiring annual returns from certain corporations.

### Acts of 1888.

Ch. 321. Authorizing foreign manufacturing corporations to hold real estate.

### Acts of 1889.

Ch. 222. Relative to the voting as proxies and the soliciting of proxy votes by officers of corporations and the filing of lists of stockholders.

### Acts of 1890.

Ch. 199. Relating to certificates of condition of corporation.

321. Concerning the insolvency of foreign corporation.

### Acts of 1891.

Ch. 257. Relating to corporate names.

341. Concerning foreign corporations having a usual place of business.

360. Authorizing commissioner of corporations to change name of corporation.

Ch. 382. To prohibit the issuing of certain obligations to be redeemed in any arbitrary order of precedence.

### Resolves of 1893.

Ch. 32. Providing for an index to the certificates of corporations in office of the secretary of the commonwealth.

### Acts of 1894.

Ch. 350. Prohibiting the issue of stocks or scrip dividends by corporations.

381. Relative to the admission of certain foreign corporations to do business in this commonwealth.

472. Relating to the increase of capital stock by certain corporations.

476. To prohibit foreign corporations from issuing stock or other securities upon the property, franchise or stock of certain domestic corporations.

500. Relating to the par value of shares of the stock of certain corporations.

508. Regulating the employment of labor.

541. Relative to foreign corporations having a usual place of business in this commonwealth.

### Resolves of 1894.

Ch. 31. Providing for an index to the certificates of incorporation filed in the office of the secretary of the commonwealth.

### Acts of 1895.

Ch. 169. To establish the fees to be paid by corporations for filing and recording certain certificates.

438. Relative to weekly payment of wages.

### Acts of 1896.

Ch. 346. Relative to the bonds of treasurers of corporations.

369. Relative to annual returns from certain corporations.

391. Relative to the paying in of capital stock, and to the liability of officers and stockholders of foreign corporations.

523. Relative to the payment of certain fees in the office of the secretary of the commonwealth.

Returns of acceptance; transfers of stock — Acts, 1883, ch. 100; 1884, ch. 229.

### Acts of 1897.

- Ch. 247. Relative to composition in insolvency with creditors of corporations.  
492. Relative to certificates and returns of corporation.

### Acts of 1898.

- Ch. 505. To prohibit deductions in the wages of women and minors.  
565. Relative to liability of corporations for negligence resulting in death.

### Acts of 1883, ch. 100.

AN ACT requiring municipal or other corporations to make returns of the acceptance or failure to accept certain acts and resolves.

When an act or resolve takes effect upon its acceptance by a municipal or other corporation, a return of the vote or action taken thereon shall be made by the clerk of such municipal or other corporation, within thirty days of such vote or action, to the secretary of the commonwealth; and when a time is prescribed in such act or resolve within which it may be accepted and the act or resolve is rejected or no action is taken thereon within the time so prescribed, a return stating such rejection, or a return that no action has been taken, shall be so made within thirty days after the time so prescribed has elapsed.

(Approved March 30, 1883.)

See ch. 106, § 3.

### Acts of 1884, ch. 229.

AN ACT relating to the transfer of stock in corporations.

Be it enacted, etc., as follows:

The delivery of a stock certificate of a corporation to a bona fide purchaser or pledgee, for value, together with a written transfer of the same, or a written power of attorney to sell, assign and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against all parties; but no such transfer shall affect the right of the corporation to pay any dividend due upon the stock, or to treat the holder of record as the holder in fact, until such transfer is recorded upon the books of the corporation, or a new certificate is issued to the person to whom it has been so transferred.

(Approved May 9, 1884.)

See ch. 105, § 23, and cross-references. Certificates. Ch. 106, § 29.

[The purchaser of stock is entitled, upon surrender of the seller's certificate, with power of attorney, to have the same transferred upon the books of the corporation, and to a new certificate therefor. A seal is not necessary. *Quiner v. Ins. Co.*, 10 Mass. 476; *Sargent v. Ins. Co.*, (8 Pick.) 25 id. 90.

An action for damages, or a bill of equity to compel a transfer and the issuing of a new certificate, will lie in favor of the purchaser against the corporation. *Sargent v. Ins. Co.*, (8 Pick.) 25 Mass. 90; *Bond v. Iron Co.*, 99 id. 505.

If the corporation unreasonably refuses to examine the evidence, upon which the party bases his right to require the transfer, it will be charged with the costs upon a decree. *Iasigi v. R. R.*, 129 Mass. 46.

A by-law requiring transfers to be made only at its office, and with the consent of the president, is void, as unreasonable. *Sargent v. Ins. Co.*, (8 Pick.) 25 Mass. 90.

A regulation of a corporation, either in its by-laws or upon the certificate, requiring shares to be transferred upon its books, is for convenience of the corporation; and an assignment, without such transfer, is valid between the parties, or against an assignee in bankruptcy of the seller. *Quiner v. Ins. Co.*, 10 Mass. 476; *Sargent v. Ins. Co.*, (8 Pick.) 25 id. 90; *Sargent v. Ry.*, (9 Pick.) 26 id. 202; *Eames v. Wheeler*, (19 Pick.) 36 id. 442; *Brown v. Smith*, 122 id. 589; *Dickenson v. Bank*, 129 id. 279.

Any action by the corporation, after notice, to the prejudice of the assignee, is void as to him. *Nesmith v. Bank*, (6 Pick.) 23 Mass. 324.

But where the charter, or some other statutes requires an actual transfer upon the books of the corporation, such an assignment will not pass title, as against an attaching creditor of the seller without such a transfer, or at least notice of sale. *Fisher v. Bank*, (5 G.) 71 Mass. 373; *Boyd v. Mills*, (7 G.) 73 id. 406; *Blanchard v. Deham Co.*, (12 G.) 78 id. 213.

In the absence of such a statutory provision, a sale of stock, without a transfer on the books, is valid against a subsequent attaching creditor of the seller. *Musie Hall v. Cory*, 129 Mass. 435. See *Dickinson v. Bank*, 129 id. 279.

If the assignee present the certificate and power of attorney, and the corporation refuse to permit the transfer to be made, a subsequent attaching creditor will not hold. *Bank v. Bank*, (10 Pick.) 27 Mass. 454.

An assignment of stock to two, with the power of attorney to one to make the transfer, is good. *Id.*

If a trustee under a will, on demanding a transfer of stock standing in the name of a testator, present to the corporation certified copies of the will, and of his appointment as trustee, the corporation has no right to require that such copies shall remain in its custody. *Bird v. R. R.*, 137 Mass. 428.

Where the proper officer certified upon the deed of a purchaser of shares that it was duly recorded, where it was not, a subsequent purchaser, whose deed was first recorded, took preference. *Hastings v. Turnpike*, (9 Pick.) 26 Mass. 80.

One who takes in good faith, and for valuable consideration, a transfer of shares is not bound to examine the books, or look beyond his certificate, to ascertain the validity of former assignment. *Mills v. Townsend*, 109 Mass. 115.

Leaving the certificate with the proper officer to be recorded is a sufficient transfer to pass the title, although a new certificate is not given. *Ellis v. Bridge*, (2 Pick.) 19 Mass. 243.

Where A. sold to B. certain shares of stock, received his check, and transferred the stock on the books, the title vested in B., although no new certificate was issued and B.'s check for the price was not paid by the bank, for certain independent frauds, there being, however, no fraud in the transaction with A. *Comins v. Coe*, 117 Mass. 45.

If a part only of A.'s stock is sold to B., and he, having one certificate, indorses thereon power of attorney to transfer the shares sold, and the power is fraudulently altered, so as to authorize a transfer of all the shares, and the corporation negligently permits that to be done, and issues new certificates for the whole, the corporation is liable to A. *Sewall v. Boston Co.*, (4 Allen) 86 Mass. 277.

A wrongful refusal to allow a transfer and give new certificates while the corporation, in its president's name, holds the stock as collateral security for a debt, which has been paid, is a conversion of the stock, and renders the corporation liable for its value. *Bond v. Iron Co.*, 99 Mass. 505.

See, further, as to the effect of transfer of stock, which is subject to an agreement that the corporation should hold the stock as collateral security for a debt of the stockholders, *Hussey v. Bank*, (10 Pick.) 27 Mass. 415.

Where a corporation, upon presentation of a certificate for shares, with the forged signature of the shareholder appended thereto, permits the transfer of the shares upon the books, and issues a new certificate, which passes to an innocent purchaser for value, who procures a new certificate, the corporation may be required, by bill in equity, to issue a certificate to the true owner, although the effect is to increase its capital stock. *Pratt v. Copper Co.*, 123 Mass. 110; *Pratt v. Bank*, id.; *R. R. v. Richardson*, 135 id. 473.

But no decree, in such a case, can be made against the broker or the purchaser, and the latter's title is perfect. *Pratt v. Copper Co.*, 123 Mass. 110; *Bank v. Field*, 126 id. 345. See also *Sewall v. Boston Co.*, (4 Allen) 86 id. 277; *Mills v. Townsend*, 109 id. 110.

In such a case, the corporation may maintain an action against the person who presented the forged power of attorney, although he acted in good faith. *R. R. v. Richardson*, 135 Mass. 473.

Where a corporation issues a certificate of stock to A., as trustee, and has notice of the name of the cestui que trust, and on A.'s wrongfully transferring the certificate, issues a new one, without inquiry, it is liable to the true owner, without proof of its fraud or collusion. *Loring v. Mills*, 125 Mass. 138.

For other rulings as to the rights of transfers of stock, and the liabilities of the corporation to them, see *Thayer v. Stearns*, (1 Pick.) 18 Mass. 109; *Oakes v. Hill*, (14 Pick.) 31 id. 442; *Bond v. Iron Co.*, 99 id. 505; *Shaw v. Spenser*, 100 id. 382; *Crocker v. R. R.*, 137 id. 417; *Newell v. Williston*, 138 id. 240; *Bank v. Williston*, id. 244.

One who sells shares of stock in a corporation which has not yet issued certificates, and agrees to give the purchaser a certificate, when he receives it, is not bound to deliver the certificate without payment by the purchaser of an assessment subsequently made out of the shares. *Brigham v. Mead*, (10 Allen) 92 Mass. 245.

Where the by-laws of corporation require a transfer of stock to be under seal, a transfer, signed by the stockholder, with the word "seal," in brackets, is of no effect. *Bishop v. Globe Co.*, 135 Mass. 132.

A purchaser of corporate stock does not lose his right of action against the corporation for refusing to recognize his rights because he fails to see that the seller surrenders his certificate and transfers it on the books, but trusts to the seller to do this. If, in fact, the certificate is fictitious and the transaction is concealed and carried through by the treasurer with whom blank certificates, signed by the president, have been left, the corporation, not the purchaser, must bear the loss, the latter having parted with his money and acted in good faith. *Allen v. R. R.*, 150 Mass. 200; s. c., 22 N. E. Rep. 917.

Nor in such case can the corporation invoke against the purchaser the rule that notice to an agent is notice to the principal, the primary object of the treasurer being, not to act as the purchaser's agent, but to perpetrate a fraud for his own benefit. Id.

But, where the treasurer turns over such a fictitious certificate to his own creditor as security for the debt, the creditor, not the corporation, must bear the loss, it not appearing that the creditor made any investigation as to the facts. *Farrington v. R. R.*, 150 Mass. 406; 23 N. E. Rep. 109.

The character of the property and the transaction, not the intention of the directors, determines the question whether a dividend upon shares in a corporation is capital or income. *Heard v. Eldredge*, 109 Mass. 258; disapproving *pro tanto* *Minot v. Palne*, 99 id. 101; *Leland v. Hayden*, 102 id. 542. See, however, *Gifford v. Thompson*, 115 id. 478.

But, as a general rule, stock dividends are to be

regarded as principal, and cash dividends as income. *Minot v. Palne*, 99 Mass. 101; *Leland v. Hayden*, 102 id. 542; *Rand v. Hubbell*, 115 id. 461.

But where the substantial effect of the transaction is to make a cash dividend, although, for the convenience of the corporation, the dividend is made *pro forma* in stock, or vice versa, the dividend will be applied to the principal or income, in accordance with the substantial effect. *Deland v. Williams*, 101 Mass. 571; *Leland v. Hayden*, 102 id. 542; *Rand v. Hubbell*, 115 id. 461.

Cash dividends by a manufacturing corporation, although from the proceeds of the sale of patent rights and castings, are income. *College v. Amory*, (9 Pick.) 26 Mass. 446. Cash dividends by a land company, formed to sell lands, from the proceeds of such sales, are income. *Balch v. Hallett*, (10 Gray) 76 Mass. 402; *Reed v. Head*, (6 Allen) 88 id. 174.

Where a corporation having sold its franchises and property, and being about to dissolve, votes to pay a dividend therefrom to its stockholders, upon surrender of their certificates, the entire sum received by a trustee for his certificates is capital, although part of the assets were undivided earnings. *Gifford v. Thompson*, 115 Mass. 478.]

### Acts of 1884, ch. 330.

AN ACT concerning foreign corporations having a usual place of business in this commonwealth.

Be it enacted, etc., as follows:

Section 1. Every corporation established under the laws of any other State or foreign country and hereafter having a usual place of business in this commonwealth shall, before doing business in this commonwealth, appoint in writing the commissioner of corporations or his successor in office to be its true and lawful attorney upon whom all lawful processes in any action or proceeding against it may be served, and in such writing shall agree that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served on the company, and that the authority shall continue in force so long as any liability remains outstanding against the company in this commonwealth. A copy of the writing duly certified and authenticated, shall be filed in the office of the said commissioner, and copies certified by him shall be deemed sufficient evidence thereof. Service upon such attorney shall be deemed sufficient service upon the principal.

§ 2. When legal process against any such company is served upon said commissioner, he shall immediately notify the company of such service by letter with postage prepaid directed in the case of a company of a foreign country to the resident manager, if any, in this country; and shall, within two days after such service, forward in the same manner a copy of the process served on him to such corporation or manager, or to any person designated by the company in writing. The plaintiff in each process so served shall pay to the commissioner at the time of such service a fee of two dollars, which shall be recovered by him as part of the taxable costs, if he prevails in the suit. The said commissioner shall keep a record of all processes served upon him, which record



Foreign corporations; change of business — Acts, 1884, ch. 330; 1885, ch. 310.

shall show the day and hour when such service was made.

§ 3. (As amended April 22, 1895.) Every such company before transacting business in this commonwealth shall file with said commissioner a copy of its charter or certificate of incorporation, and a statement of the amount of its capital stock, and the amount paid in thereon to its treasurer, and if any part of such payment has been made otherwise than in money the statement shall set forth the particulars thereof, and said statement shall be subscribed and sworn to by its president, treasurer and by a majority of its directors or officers having the powers usually exercised by directors. All such companies now doing business in this commonwealth shall file such copy and such statement on or before the first day of October next, provided such business is thereafter continued. Every officer of a corporation which fails to comply with the requirements of this act, and every agent of such corporation who transacts business as such in this commonwealth shall for such failure be liable to a fine not exceeding five hundred dollars; but such failure shall not affect the validity of any contract by or with such corporation. Every such company shall pay into the treasury ten dollars for filing the copy of its charter, and five dollars for filing the statement required by this section. The provisions of the public statutes in so far as they impose penalties and liabilities, and the enforcement of the same, upon officers and stockholders of domestic corporations for false and fraudulent statements and returns, shall apply to the officers and stockholders of foreign corporations doing business in this commonwealth and subject to the provisions of this act.

§ 4. This act shall not apply to foreign insurance companies.

§ 5. This act shall take effect on the first day of July in the year eighteen hundred and eighty-four.

(Approved June 4, 1884.)

See Acts of 1890, ch. 321; ch. 106, § 1. Concerning foreign corporations. Acts of 1891, ch. 341. Admission of, to do business in this commonwealth. Acts of 1894, chs. 381, 541. Foreign corporation may be sued. P. S., ch. 106, § 28.

[A foreign insurance corporation may make a valid contract of insurance in this commonwealth. *Kennebeck Co. v. Ins. Co.*, (6 Gray) 72 Mass. 204.

A foreign insurance corporation may take a mortgage here to secure a debt owing to it by a citizen of this commonwealth, and may foreclose the same. *Ins. Co. v. Owen*, (15 Gray) 81 Mass. 491.

A bill in equity will not lie against a foreign corporation, having neither officer nor an officer here, for a failure to declare and pay dividend, according to its certificate of stock. *Williston v. R. R.*, (13 Allen) 95 Mass. 400.

In general, an action will lie against a foreign corporation only where an attachment has been made of its property within this commonwealth. *Peckham v. Parish*, (16 Pick.) 33 Mass. 274; *Silloway v. Ins. Co.*, (8 Gray) 74 id. 199; *Andrews v. R. R.*, 99 id. 534; *Bank v. Huntington*, 129 id. 444.

Before above act, it was held that the supreme judicial court had no jurisdiction of a bill in equity by a resident against a foreign corporation, having a place of business here, to compel performance of an agreement to assign letters-patent and chattels, where the only service of the subpoena was upon the treasurer. *Desper v. Continental Co.*, 137 Mass. 252.

The statute of the State where a foreign corporation was incorporated, which permits trustees, etc., to prosecute actions after the dissolution, will enable an assignee to prosecute here, after the expiration of the charter, an action previously commenced by the corporation. *Bank v. Gardner*, (15 Gray) 81 Mass. 362.

A payment of corporate debts by a stockholder of a foreign corporation will be presumed to have been voluntary, in the absence of proof that he was liable therefor. *Eastman v. Crosby* (8 Allen) 90 Mass. 206.

The dissolution of a foreign corporation by the foreign government prevents the subsequent recovery of a judgment in this or another State. *Remington v. Bay Co.*, 140 Mass. 494; s. c., 5 N. E. Rep. 292. See also *Bank v. Gardner*, (15 Gray) 81 Mass. 362.

The rights and obligations of the stockholders of a foreign corporation, as between themselves and the corporation, are to be determined by the laws of the State wherein it was created. *Hutchins v. Coal Co.*, (4 Allen) 86 Mass. 580; *Halsey v. McLean*, (12 Allen) 94 id. 438; *Bishop v. Globe Co.*, 135 id. 132.

A lien upon the stock, given by the foreign law, for a debt due from a stockholder, is a good defense here to an action by his assignee. *Bishop v. Globe Co.*, 135 Mass. 132.

A creditor cannot maintain an action here to enforce the personal liability of a stockholder or an officer created by the foreign law. *Erickson v. Nesmith*, (15 Gray) 81 Mass. 221; *Erickson v. Nesmith*, (4 Allen) 86 id. 233; *Halsey v. McLean*, (12 Allen) 94 id. 438.

A joint-stock company, formed under the New York statutes for that purpose, is a copartnership, not a corporation; and the provision of that statute that actions must be brought in the first instance against the association through its officers, is not binding here. *Taft v. Ward*, 106 Mass. 518; *Bodwell v. Eastman*, id. 525; *R. R. v. Pearson*, 128 id. 445; *Gott v. Dinsmore*, 111 id. 45.

A foreign corporation, after appearing and answering to the merits, cannot, on the hearing, first object to the jurisdiction. *Pierce v. Assurance Co.*, 145 Mass. 56; s. c., 12 N. E. Rep. 858.

A foreign corporation may maintain a bill of discovery in this commonwealth to obtain the names of the stockholders in another foreign corporation against which a foreign judgment has been obtained, such discovery being necessary to the enforcement of their personal liability under the foreign law, and the corporate books and officers being here. *Post v. R. R.*, 144 Mass. 341; s. c., 11 N. E. Rep. 540.

A declaration to enforce in Massachusetts the liability of a stockholder of a foreign corporation held sufficient. *Bank v. Ellis*, 166 Mass. 414; s. c., 44 N. E. Rep. 349.

Enforcement of liability of a stockholder of a foreign corporation determined. *Coffing v. Dodge*, 167 Mass. 231; s. c., 45 N. E. Rep. 928.]

### Acts of 1885, ch. 310.

AN ACT relating to change of business by corporations.

Be it enacted, etc., as follows:

The provisions of section fifty-one of chapter one hundred and six of the public statutes shall apply to and include all corporations mentioned in the third section of said chapter and those which have complied with the provisions of the fourth section thereof.

(Approved June 9, 1885.)

**Acts of 1886, ch. 173.**

AN ACT relating to providing means of communication between rooms in manufacturing establishments where machinery is propelled by steam and the room where the engineer is stationed.

Section 1. In every manufacturing establishment where the machinery used is propelled by steam, communication shall be provided between each room where such machinery is placed and the room where the engineer is stationed, by means of speaking tubes, electric bells or such other means as shall be satisfactory to the inspectors of factories: Provided, That in the opinion of the inspectors such communication is necessary.

§ 2. The inspectors of factories shall enforce the provisions of this act, and any person, firm or corporation being the occupant of any manufacturing establishment or controlling the use of any building or room where machinery propelled by steam is used, violating the provisions of this act shall forfeit to the use of the commonwealth not less than twenty-five nor more than one hundred dollars; but no prosecution shall be made for such violation until four weeks after notice in writing by an inspector has been sent by mail to such person, firm or corporation of any changes necessary to be made to comply with the provisions of this act, nor then if in the meantime such changes have been made in accordance with such notification.

(Approved April 29, 1886.)

See Acts of 1894, ch. 508, and cross-references.

**Acts of 1886, ch. 174**

AN ACT relating to the annual collection of statistics of manufactures.

Section 1. It shall be the duty of the bureau of statistics of labor, annually, on or before the fifteenth day of December, to transmit by mail to the owner, operator or manager of every manufacturing establishment in the commonwealth, a schedule embodying inquiries as to:

1. Name of the individual, firm or corporation.

2. Kind of goods manufactured or business done.

3. Number of partners or stockholders.

4. Capital invested.

5. Principal stock or raw material used, and total value thereof.

6. Gross quantity and value of articles manufactured.

7. Average number of persons employed distinguishing as to sex, and whether adults or children.

8. Smallest number of persons employed, and the month in which such number was employed.

9. Largest number of persons employed, and the month in which such number was employed.

10. Total wages, not including salaries of managers, paid during the year, distinguishing as to sex, adults and children.

11. Proportion that the business of the year bore to the greatest capacity for production of the establishment.

12. Number of weeks in operation during the year, partial time being reduced to full time.

§ 2. It shall be the duty of every owner, operator or manager of every establishment engaged in manufacturing and receiving the foregoing schedule, to answer the inquiries borne thereon for the year ending the thirty-first day of December, or for the last financial year of the establishment, and return said schedule to said bureau, with the answers therein certified as to their accuracy, on or before the twentieth day of January following the receipt of such schedule.

§ 3. The said bureau, annually, after it shall have gathered the facts as called for in the previous sections, shall cause to be prepared and printed true abstracts of the same, with proper and comparative analysis thereof, and report the same to the legislature; and such abstracts shall be printed compactly in one volume, uniform in style with the reports on the decennial census of the commonwealth for the year eighteen hundred and eighty-five, and such report shall be stereotyped, and shall be numbered as one of the series of public documents, and ten thousand copies thereof printed, to be distributed as follows: Twenty-five copies to the governor; twenty copies to the lieutenant-governor, and to each member of the council; fifteen copies to each member of the legislature; and ten copies to the State library, and to the secretary of the commonwealth, and to each head of a department or bureau, and to each of the clerks of the two branches of the legislature; also one copy to each reporter assigned a seat in either branch, and one copy to each person, official and institution as provided for in section two, chapter four of the public statutes, other than those hereinbefore specified.

§ 4. No use shall be made in said reports of the names of individuals, firms or corporations, supplying the information called for by this act, such information being deemed confidential, and not for the purpose of disclosing any person's affairs, and any agent or employee of said bureau violating this provision shall forfeit a sum not exceeding five hundred dollars, or be imprisoned for not more than one year.

§ 5. For the purposes contemplated in this act, the bureau of statistics of labor is hereby authorized to expend a sum not exceeding sixty-five hundred dollars annually.

§ 6. So much of chapter one hundred and eighty-one of the acts of the year eighteen hundred and eighty-four as relates to sched-



Special stock; accidents, etc.; annual, etc.—Acts, 1886, chs. 209, 260; 1888, ch. 321.

ule number two for the collection of the decennial statistics of the manufactures of the commonwealth is hereby repealed.

§ 7. This act shall take effect upon its passage.

(Approved April 29, 1886.)

See Acts of 1890, ch. 199.

#### Acts of 1886, ch. 209.

AN ACT authorizing corporations to issue special stock to be held by their employes only.

Be it enacted, etc., as follows:

Section 1. Every corporation created under the provisions of chapter one hundred and six of the Public Statutes, by a vote of its general stockholders at a meeting duly called for the purpose, may issue special stock to be held only by the employes of such corporation. The par value of the shares of such special stock shall be ten dollars, and the purchasers thereof may pay for the same in monthly instalments of one dollar upon each share. Such special stock shall not exceed two-fifths of the actual capital of the corporation.

§ 2. Whenever a dividend is paid by such corporation to its stockholders, the holders of such special stock shall receive upon each share, which has been paid for in full in time to be entitled to a dividend, a sum which shall bear such proportion to the sum paid as a dividend upon each share of the general stock of such corporation as the par value of the shares of such special stock bears to the par value of the shares of such general stock.

§ 3. The shares of such special stock shall not be sold or transferred except to an employe of such corporation or to the corporation itself. Any corporation issuing such special stock may provide by its by-laws as to the number of shares which may be held by any one employe, the methods of transfer and the redemption of such stock in case any person holding the same shall cease to be an employe of the corporation.

(Approved May 14, 1886.)

See ch. 106, § 42.

#### Acts of 1886, ch. 260.

AN ACT relative to reports of accidents in factories and manufacturing establishments.

Section 1. All manufacturers and manufacturing corporations shall forthwith send to the chief of the Massachusetts district police a written notice of any accident to an employe while at work in any factory or manufacturing establishment operated by them whenever the accident results in the death of said employe or causes bodily injury of such a nature as to prevent the person in-

jured from returning to his work within four days after the occurrence of the accident.

§ 2. Any person or corporation violating any of the provisions of section one of this act shall be punished by a fine not exceeding twenty dollars.

§ 3. The chief of the Massachusetts district police shall keep a record of all accidents so reported to him, together with a statement of the name of the person injured, the city or town where the accident occurred, and the cause thereof, and shall include an abstract of said record in his annual report.

§ 4. This act shall take effect on the first day of July in the year eighteen hundred and eighty-six.

(Approved June 1, 1886.)

See Acts of 1894, ch. 508.

#### Acts of 1887, ch. 225.

AN ACT requiring annual returns from certain corporations.

Section 1. Every corporation chartered by this commonwealth subsequently to the twenty-third day of February in the year eighteen hundred and thirty, or organized under the general laws, for the purposes of business or profit, having a capital stock divided into shares, except banks, co-operative banks, savings banks and institutions for savings, insurance companies, including the Massachusetts Hospital Life Insurance Company, steam and street and railway companies, safe deposit and trust companies and the Collateral Loan Company shall be subject to the provisions of sections fifty-four, fifty-five, fifty-nine, eighty-one, eighty-two and eighty-four of chapter one hundred and six of the Public Statutes, and shall annually make and file the certificates and returns therein required.

§ 2. This act shall take effect on the first day of July next.

(Approved April 26, 1887.)

See ch. 13, § 4, and cross-references; ch. 106, § 54. Fee for filing certificate. Ch. 106, § 84.

#### Acts of 1888, ch. 321.

AN ACT authorizing foreign manufacturing corporations to hold real estate in this commonwealth.

Be it enacted, etc., as follows:

Section 1. (As amended May 14, 1895.) Manufacturing corporations established under the laws of other States or foreign countries, which have complied with the provisions of chapter three hundred and thirty of the acts of the year eighteen hundred and eighty-four, may purchase and hold such real estate in this commonwealth as may be necessary for conducting their business.

(Approved May 10, 1888.)

See ch. 106, § 36.



Proxies; certificates, etc.; foreign corporation — Acts, 1889, ch. 222; 1891, ch. 257.

### Acts of 1889, ch. 222.

AN ACT relative to the voting as proxies and the soliciting of proxy votes by officers of corporations and the filing of lists of stockholders.

Be it enacted, etc., as follows:

Section 1. Sections fourteen and fifteen of chapter one hundred and five of the Public Statutes are hereby repealed.

§ 2. It shall be within the discretion of the supreme judicial court to cause the removal and disqualification from holding office of an officer of a corporation who has, prior to the passage of this act, violated the provisions of said section fourteen of chapter one hundred and five.

§ 3. Every corporation established under the laws of this commonwealth shall, if requested in writing by any stockholder thereof, not less than thirty days and not more than sixty days prior to the annual meeting of stockholders, cause, within fifteen days, to be made and filed in the office of the secretary of the commonwealth a complete list of the stockholders as of the sixtieth day prior to the time so fixed, with the place of residence and the number of shares belonging to each stockholder. Such certificate shall be in a form such as the commissioner of corporations shall require or approve, and shall be signed and sworn to by the treasurer of the corporation or, in his stead, by some other officer cognizant of the facts who may be specially appointed by the corporation to make the same. A corporation which omits or neglects to cause a list of its stockholders to be made and filed as aforesaid shall forfeit a sum not exceeding one thousand dollars, and the treasurer or other officer whose duty it is to make such certificate shall in addition be liable to a like sum for such omission or neglect; and these penalties may be enforced in the manner set forth in sections eighty-one and eighty-two of chapter one hundred and six of the Public Statutes.

(Approved April 5, 1889.)

See ch. 105, § 14; ch. 106, § 27.

### Acts of 1890, ch. 199.

AN ACT relating to certificates of condition of corporations.

Be it enacted, etc., as follows:

Section 1. The certificates of condition of corporations, required by law to be filed and recorded in the office of the secretary of the commonwealth, shall by the act of filing be deemed and taken to be recorded within the meaning of the statute requiring such record to be made. The secretary shall cause such certificates to be preserved in book form convenient for reference.

§ 2. This act shall take effect upon its passage.

(Approved April 21, 1890.)

See ch. 106, § 54. Fee for filing certificates. Ch. 106, § 84. Collection of statistics. Acts of 1886, ch. 174.

### Acts of 1890, ch. 321.

AN ACT concerning the insolvency of foreign corporations.

Be it enacted, etc., as follows:

Section 1. All foreign corporations which are or may be subject to the provisions of chapter three hundred and thirty of the acts of the year one thousand eight hundred and eighty-four, excepting railroad and banking corporations, may take the benefit of section one hundred and twenty-seven of chapter one hundred and fifty-seven of the Public Statutes and acts amendatory thereof; and sections one hundred and twenty-eight, one hundred and twenty-nine and one hundred and thirty of said chapter shall apply to such corporations so far as any property or assets within the commonwealth are concerned; and said corporations may be proceeded against in accordance with section one hundred and thirty-six of said chapter in the cases in said section mentioned; and in such proceedings service upon the commissioner of corporations shall be a sufficient notice to the corporation of the presentment of the petition by creditors as authorized by said statutes; and thereupon such further proceedings shall be had as are in said section authorized. The petition shall be presented in the county where said corporation has its principal place of business within the commonwealth.

§ 2. The assignees appointed under authority of this act shall have all the title, rights, powers, duties and privileges that assignees of Massachusetts corporations have under chapter one hundred and fifty-seven of the Public Statutes so far as any property rights or credits within the commonwealth, or which may be put into their possession by said corporation, are concerned. And it shall be their duty so far as practicable to distribute such assets in such a manner that all creditors of the insolvent corporation, whether within this State or elsewhere shall receive proportionate dividends out of the assets of said corporation, whether the same are within the control of said assignees or not; excepting always, that the claims entitled to priority under chapter one hundred and fifty-seven of the Public Statutes shall have the same priority under this act as is given in said chapter.

(Approved May 23, 1890.)

See Acts of 1884, ch. 230, and cross-references. Insolvent corporations. Ch. 157, § 127.

### Acts of 1891, ch. 257.

AN ACT relating to corporate names.

Be it enacted, etc., as follows:

Section 1. A corporation organized under the general laws of the commonwealth shall not be allowed to assume the name of a corporation established under the laws of, or carrying on business in this commonwealth at the time of such organization or

within three years previous to such organization, or a name so similar thereto as to be liable to be mistaken for it, unless the consent in writing of said existing corporation shall have been previously filed with the commissioner of corporations; and the action of any board, commissioner or officer of the commonwealth in approval of the certificate of organization, or in issuing a certificate of incorporation shall be subject to revision as provided in the following section.

§ 2. The supreme judicial court or the superior court may enjoin a corporation organized as aforesaid from doing business under a name prohibited by the foregoing section, upon a bill in equity or petition brought by any person or corporation interested therein or affected thereby.

§ 3. All acts and parts of acts inconsistent herewith are hereby repealed.

(Approved April 28, 1891.)

See ch. 106, § 17.

#### Acts of 1891, ch. 360.

AN ACT concerning foreign corporations having a usual place of business in this commonwealth.

Be it enacted, etc., as follows:

Section 1. All corporations chartered or organized under the laws of another State or country and having a usual place of business in this commonwealth, shall annually in the month of March make and file in the office of the secretary of the commonwealth a certificate, signed and sworn to by its president, treasurer, and at least a majority of its directors, stating the amount of its capital stock as it then stands fixed by the corporation, the amount then paid up, and the assets and liabilities of the corporation, in such form as the commissioner of corporations shall require or approve. This section shall not apply to railroad companies, nor to mining and manufacturing companies actually conducting their mining and manufacturing operations wholly without the commonwealth, nor to those foreign corporations which are required to make annual returns to other officers of the commonwealth than the commissioner of corporations.

§ 2. Every such corporation which omits to file such annual statement shall forfeit two hundred dollars, to be recovered by action of tort brought in the name of the commonwealth in the county of Suffolk; and its president, treasurer and directors for the time being shall, in addition, be jointly liable in a like sum for such omission or neglect; all sums forfeited by a corporation as aforesaid may also be collected by information in equity brought in the supreme judicial court in the name of the attorney-general at the relation of the commissioner of corporations; and upon such information the court may issue an injunction restraining the further prosecution of the business of the corporation named therein until the sums so

forfeited are paid with interest and costs, and until the returns required by this act are made.

§ 3. Every such corporation, upon an increase of its capital stock, shall, within thirty days after the payment or collection thereof, file a certificate of the amount of such increase and the fact of such payment, signed and sworn to by its president, treasurer and at least a majority of its directors, in the office of the secretary of the commonwealth.

§ 4. Every such corporation shall, within thirty days after the reduction of its capital stock is voted, file in the office of the secretary of the commonwealth a copy, signed and sworn to by its clerk, of the vote or votes authorizing such reduction.

§ 5. Every certificate required to be filed by this act shall, before filing, be submitted to the commissioner of corporations, who shall examine the same, and if it appears to him to be a sufficient compliance with the requirements of this act he shall certify his approval thereof by indorsement upon the same.

§ 6. The fee to be paid by the corporation for filing the certificate of condition required by this act shall be five dollars, and for each of the other certificates, one dollar.

(Approved May 16, 1891.)

Section 2 of above act is repealed by § 2 of ch. 541, Acts of 1894. See Acts of 1884, ch. 320, and cross-references.

#### Acts of 1891, ch. 360.

AN ACT authorizing the commissioner of corporations to change the name of corporations.

Section 1. (As amended April 22, 1892.) The commissioner of corporations may authorize any corporation subject to the provisions of chapter eighty-two, one hundred and six, one hundred and seven, one hundred and eight, one hundred and nine, one hundred and ten, one hundred and eleven, one hundred and twelve, one hundred and thirteen, one hundred and fourteen, one hundred and fifteen, one hundred and sixteen, one hundred and seventeen, one hundred and eighteen and one hundred and nineteen of the Public Statutes, and acts amendatory of any of said chapters, to change its name, upon notice and hearing, as hereinafter set forth: Provided, Such corporation shall, previously to its application to the commissioner of corporations for change of its name, at a meeting called for that purpose have voted, by a vote of two-thirds of the stockholders present and voting at the meeting, to change its name and adopt a new one.

§ 2. Before authorizing a change of name, as provided in section one, the commissioner shall require public notice of the application therefor to be given, that all persons may appear to show cause, if any they have, why the application should not be granted.



Change of name; bonds; stock dividends — Acts, 1891, ch. 382; 1894, ch. 350.

§ 3. When such change of name shall have been authorized by the commissioner of corporations, a certified copy of his authorization of the same, together with a certificate setting forth the vote of the corporation to so change its name and adopt a new one, signed and sworn to by the president, treasurer and a majority of the directors, shall be filed in the office of the secretary of the commonwealth. And the commissioner shall require public notice to be given of the change so authorized; and on receipt of proof thereof the secretary of the commonwealth may grant a certificate of the name which the corporation shall bear, and which shall thereafter be its legal name, subject however to the provisions of chapter two hundred and fifty-seven of the acts of the year eighteen hundred and ninety-one.

§ 4. A corporation under its new name shall have the same rights, powers and privileges, and be subject to the same duties, obligations and liabilities as before such change, and may sue and be sued by its own name, but any action brought against it by its former name shall not be defeated on that account, and, on motion of either party, the new name can be substituted therefor in the action.

§ 5. The secretary of the commonwealth shall prepare and submit to the general court, together with the abstract of certificate required by section two of chapter one hundred and six of the Public Statutes, a statement of all names of the corporations changed under the provisions of this act.

§ 6. In the case of corporations not having a capital stock, a two-thirds vote of the persons legally qualified to vote in meetings of the corporation, and present and voting on the question of change, shall be sufficient, in lieu of the vote of the stockholders required by section one of this act; and in the case of corporations not having a president, treasurer and directors, the certificate of the vote of the corporation required by section three of this act shall be sufficient if signed and sworn to by the presiding and the financial officer and a majority of its other officers having the power of directors, by whatever name called.

(Approved May 28, 1891.)

See Acts of 1896, ch. 523. Duties of commissioner. Ch. 106, § 1. Corporate name. Ch. 106, § 17.

#### Acts of 1891, ch. 382.

AN ACT to prohibit the issuing of certain obligations to be redeemed in numerical order or in any arbitrary order of precedence.

Be it enacted, etc., as follows:

Section 1. All corporations organized under the laws of this commonwealth, all foreign corporations doing business in this commonwealth, and all companies and persons are prohibited from issuing, negotiating or selling any bonds, certificates or obligations of

any kind, which are by the terms thereof to be redeemed in numerical order or in any arbitrary order of precedence, without reference to the amount previously paid thereon by the holder thereof, whether the same are sold on the instalment plan or otherwise.

§ 2. Any company or person violating any of the provisions of this act shall be punished by a fine of fifty dollars for each offense, and any corporation violating any of the provisions of this act shall forfeit the sum of fifty dollars for each offense, to be recovered in an action of tort, brought in the name of the commonwealth in the county in which the corporation is established.

§ 3. The violation of any of the provisions of this act by any corporation organized under the laws of this commonwealth shall work a forfeiture of its franchise.

§ 4. The violation of any of the provisions of this act by any corporation not organized under the laws of this commonwealth shall operate as a discontinuance of its right to do business in this commonwealth, and the supreme judicial court on application of the commissioner of foreign-mortgage corporations and proof of a violation of any of the provisions of this act, shall enjoin such corporation from further continuing its business in this commonwealth.

(Approved June 9, 1891.)

See ch. 77, §§ 4 et seq.

#### Resolves of 1893, ch. 32.

RESOLVE providing for an index to the certificates of corporations filed in the office of the secretary of the commonwealth.

Resolved, That there be allowed and paid out of the treasury of the commonwealth a sum not exceeding twelve hundred dollars, for the purpose of making an index of certificates of corporations filed under general laws from the year eighteen hundred and fifty-one up to the present time, in the office of the secretary of the commonwealth.

(Approved March 17, 1893.)

See ch. 106, § 21. Resolves of 1894, ch. 31.

#### Acts of 1894, ch. 350.

AN ACT prohibiting the issue of stock or scrip dividends by corporations.

Be it enacted, etc., as follows:

Section 1. No telegraph, telephone, gas-light, electric light, steam railroad, street railway, aqueduct or water company established under the laws of this commonwealth shall declare any stock or scrip dividend or divide the proceeds of the sale of stock or scrip among its stockholders; nor shall any such company create any additional new stock or issue certificates thereof to any person unless the par value of the shares so issued is first paid in cash to its treasurer.

§ 2. All certificates of stock or scrip issued in violation of the preceding section shall be void; and the directors of the corporation issuing the same shall be liable to a penalty



of one thousand dollars each, to be recovered by indictment in any county where any of them reside; but if any such director proves that before such issue he filed his dissent therefrom in writing with the clerk, or was absent and at no time voted therefor, he shall not be so liable.

§ 3. Sections eighteen and nineteen of chapter one hundred and five of the Public Statutes are hereby repealed.

(Approved May 7, 1894.)

See ch. 105, § 16.

#### Acts of 1894, ch. 381.

AN ACT relative to the admission of certain foreign corporations to do business in this commonwealth.

Be it enacted, etc., as follows:

Section 1. It shall be unlawful for any corporation, association or organization of another State or country, except life insurance companies as provided in chapter two hundred and fourteen of the acts of the year eighteen hundred and eighty-seven, to engage or continue in the commonwealth in any kind of business the transaction of which by domestic corporations is not permitted by the laws of the commonwealth. The commissioner of corporations, the insurance commissioner, and any other officer of the commonwealth whose duty it is to examine and decide whether a corporation, association or other organization is privileged to file any papers under chapter three hundred and thirty of the acts of eighteen hundred and eighty-four, chapter two hundred and fourteen of the acts of the year eighteen hundred and eighty-seven, chapter four hundred and twenty-one of the acts of the year eighteen hundred and ninety, chapter forty of the acts of the year eighteen hundred and ninety-two, or any act in amendment thereof, shall refuse to accept or file the charter, financial statement or other papers, or accept appointment as attorney for service for any corporation, association or other organization doing a business in this commonwealth, the transaction of which by domestic corporations is not then permitted by the laws of the commonwealth.

§ 2. This act shall take effect upon the first day of January in the year eighteen hundred and ninety-five.

(Approved May 12, 1894.)

See Acts of 1884, ch. 330, and cross-references.

#### Acts of 1894, ch. 472.

AN ACT relating to the increase of capital stock by corporations owning or operating a railroad or railway by steam or other power, and of gaslight, electric light, telegraph, telephone, aqueduct and water companies.

Be it enacted, etc., as follows:

Section 1. Whenever a corporation owning or operating a railroad or railway, whether such railroad or railway is operated by

steam or other power, or a gaslight, electric light, aqueduct or water company, or a corporation established for and engaged in the business of transmitting intelligence by electricity, increases its capital stock, the new shares to the number necessary to produce the amount necessary for the purposes for which such increase is authorized shall be offered proportionately to its stockholders at not less than the market value thereof at the time of increase, as shall be determined by the board of railroad commissioners in the case of a steam railroad or street railway company, by the board of gas and electric light commissioners in the case of a gaslight or electric light company, and by the commissioner of corporations in the case of an aqueduct or water company or a corporation established for and engaged in the business of transmitting intelligence by electricity, taking into account previous sales of stock of the corporation and other pertinent conditions. The directors shall cause written notice of such increase to be given to each stockholder who was such at the date of the vote to increase, stating the amount of such increase and the proportion thereof in shares or portions of shares which he would be entitled to receive on a division of the same, and the price at which he is entitled to take the same, and fixing a time, not less than fifteen days from the date of such notice, within which he may subscribe for such additional stock; and each stockholder may, within the time fixed, subscribe for his portion of such stock, and the same shall be paid for in cash on the issue of a certificate therefor: Provided, That when the increase in the capital stock does not exceed four per cent. of the existing capital stock of the corporation the directors may dispose of the same in the manner provided in section two of this act, without first offering the same to the stockholders.

§ 2. If, after the expiration of the notice provided for in the preceding section, any shares of such stock remain unsubscribed for by the stockholders entitled to take them, the directors shall sell the same at auction. All shares to be disposed of at auction under the provisions of this act shall be offered for sale to the highest bidder, in the city of Boston or such city or town as may be prescribed by such commissioners; and notice of the time and place of such sale shall be published at least five times during the ten days immediately preceding the sale, in such daily newspapers, not less than three in number, as may be prescribed by such commissioners. No shares shall be sold or issued for a less sum, to be actually paid in cash, than the par value thereof.

§ 3. Sections thirty-nine, forty and forty-one of chapter one hundred and six, sections seven and eight of chapter one hundred and ten, of the Public Statutes, and chapter three hundred and fifteen of the acts of the year eighteen hundred and ninety-three, are hereby repealed.

Foreign corporations; par value; employment of labor — Acts, 1894; chs. 476, 500, 508.

§ 4. Nothing herein contained shall affect any issue of stock or bonds authorized by said board of railroad commissioners or by said board of gas and electric light commissioners prior to the passage of this act.

(Approved June 14, 1894.)

See ch. 105, §§ 16, 20; ch. 106, § 34.

#### Acts of 1894, ch. 476.

AN ACT to prohibit foreign corporations from issuing stock or other securities upon the property, franchise or stock of certain domestic corporations.

Be it enacted, etc., as follows:

Section 1. If a foreign corporation which owns or controls a majority of the capital stock of a domestic street railway, gaslight or electric light corporation, shall hereafter issue stock, bonds or other evidences of indebtedness, based upon or secured by the property, franchise or stock of such domestic corporation, unless such issue is authorized by the law of this commonwealth, the supreme judicial court, sitting in equity, may in its discretion dissolve such domestic corporation. Nothing contained in this act shall be construed as affecting the right of corporations, the officers and agents thereof, to issue bonds and stocks in fulfillment of contracts now existing.

§ 2. It shall be the duty of the attorney-general, whenever he is satisfied that such issue has been made, to institute proceedings in said court for the dissolution of such domestic corporation and the proper disposition of its assets.

(Approved June 14, 1894.)

See ch. 77, §§ 5 et seq.

#### Acts of 1894, ch. 500, as amended by Acts of 1898, ch. 503.

AN ACT relating to the par value of shares of the capital stock of certain corporations.

Be it enacted, etc., as follows:

The par value of shares in the capital stock of any corporation organized for any of the purposes mentioned or referred to in sections seven, eight, thirteen and fourteen of chapter one hundred and six of the Public Statutes may be one hundred dollars, or any smaller sum, not less than twenty-five dollars, fixed in its articles of association; and any such corporation, at a meeting of its stockholders called for the purpose, may change the par value of its shares: Provided, That a certificate of such change shall, within ten days thereafter, be made, signed and sworn to by its president, treasurer and a majority of its directors; and having been approved as to form by the commissioner of corporations, be filed in the office of the secretary of the commonwealth.

(Approved June 21, 1894.)

See ch. 105, § 16.

#### Acts of 1894, ch. 508.

AN ACT regulating the employment of labor.

Be it enacted, etc., as follows:

Section 1. Any person or corporation engaged in manufacturing, which requires from persons in his or its employ, under penalty of forfeiture of a part of the wages earned by them, a notice of intention to leave such employ, shall be liable to the payment of a like forfeiture if he or it discharges without similar notice a person in such employ except for incapacity or misconduct, unless in case of a general suspension of labor in his or its shop or factory.

§ 2. No person shall, by intimidation or force, prevent or seek to prevent a person from entering into or continuing in the employment of any person or corporation.

§ 3. No person or corporation, or agent or officer on behalf of any person or corporation, shall coerce or compel any person or persons into an agreement, either written or verbal, not to join or become a member of any labor organization, as a condition of such person or persons securing employment or continuing in the employment of any such person or corporation.

§ 4. No owner, superintendent or overseer in any manufacturing, mechanical or mercantile establishment shall employ or permit to be employed therein any person entitled to vote at a State election, except such establishment as may lawfully conduct its business on Sunday, during the period of two hours after the opening of the polls in the voting precinct or town in which he is entitled to vote, if he shall make application for leave of absence during such period.

§ 5. No person shall, by threatening to discharge a person from his employment, or threatening to reduce the wages of a person, or by promising to give employment at higher wages to a person, attempt to influence a qualified voter to give or to withhold his vote at an election.

§ 6. No person or corporation shall, by special contract with persons in his or its employ, exempt himself or itself from any liability which he or it might be under to such persons for injuries suffered by them in their employment and which result from the employer's own negligence or from the negligence of other persons in his or its employ.

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§ 10. No minor under eighteen years of age shall be employed in laboring in any mercantile establishment more than sixty hours in any one week.

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§ 11. No minor under eighteen years of age, and no woman shall be employed in laboring in any manufacturing or mechanical establishment more than ten hours in any one day, except as hereinafter provided in this section, or when a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work



for one day of the week; and in no case shall the hours of labor exceed fifty-eight in a week. Every employer shall post in a conspicuous place in every room where such persons are employed, a printed notice stating the number of hours' work required of them on each day of the week, the hours of commencing and stopping such work, and the hours when the time or times allowed for dinner or for other meals begins and ends, or in the case of establishments exempted from the provisions of this act, the time, if any, allowed for dinner and for other meals; the printed form of such notice shall be furnished by the chief of the district police, and shall be approved by the attorney-general; and the employment of any such person for a longer time in any day than that so stated shall be deemed a violation of this section, unless it appears that such employment is to make up for time lost on some previous day of the same week, in consequence of the stopping of machinery upon which such person was employed or dependent for employment; but no stopping of machinery for a shorter continuous time than thirty minutes shall authorize such overtime employment, nor shall any such stopping authorize such employment unless, or until, a written report of the day and hour of its occurrence, with its duration, is sent to the chief of the district police, or to the inspector of factories for the district. If any minor under eighteen years of age, or any woman, shall without the orders, consent or knowledge of the employer or of any superintendent, overseer or other agent of the employer, labor in a manufacturing or mechanical establishment during any part of any time allowed for dinner or for other meals in such establishment, according to the notice above mentioned, and if a copy of such notice was posted in a conspicuous place in the room where such labor took place, together with a rule of the establishment forbidding such minor or woman to labor during such time, then neither the employer nor any superintendent, overseer or other agent of the employer shall be held responsible for such employment.

§ 12. No person or corporation, or officer or agent thereof, shall employ any woman or minor in any capacity for the purpose of manufacturing, between the hours of ten o'clock at night and six o'clock in the morning.

§ 13. No child under thirteen years of age shall be employed at any time in any factory, workshop or mercantile establishment. No such child shall be employed in any indoor work performed for wages or other compensation, to whomsoever payable, during the hours when the public schools of the city or town in which he resides are in session, or shall be employed in any manner during such hours unless during the year next preceding such employment he has attended school for at least thirty weeks as required by law.

§ 14. No child under fourteen years of age shall be employed in any manner before the hour of six o'clock in the morning or after the hour of seven o'clock in the evening. No such child shall be employed in any factory, workshop or mercantile establishment, except during the vacation of the public schools in the city or town in which he resides, unless the person or corporation employing him procures and keeps on file a certificate and employment ticket for such child, as prescribed by section seventeen of this act; and no such child shall be employed in any indoor work performed for wages or other compensation, to whomsoever payable, during the hours when the public schools of such city or town are in session, unless as aforesaid, or shall be employed in any manner during such hours unless during the year next preceding such employment he attended school for at least thirty weeks as required by law: Provided, The public schools are in session that number of weeks, which time may be divided, so far as the arrangements of school terms will allow, into three terms of ten consecutive weeks each; and such employment shall not continue in any case beyond the time when such certificate expires.

§ 15. The chief of the district police, with the approval of the governor, shall have authority to designate any kind or kinds of employment in factories, workshops or mercantile establishments as injurious to the health of children under fourteen years of age employed therein; and after one week's written notice from the said chief to the employer, or his superintendent, overseer or other agent, of such designation, no such child shall be employed in any such kind or kinds of employment in any factory, workshop or mercantile establishment.

§ 16. No child under sixteen years of age shall be employed in any factory, workshop or mercantile establishment unless the person or corporation employing him procures and keeps on file the certificate required in the case of such child by the following section, and also keeps on file a full and complete list of such children employed therein.

§ 17. The certificate of a child under fourteen years of age shall not be signed until he presents to the person authorized to sign the same an employment ticket as herein-after prescribed, duly filled out and signed. The certificate and the employment ticket shall be separately printed, and shall be in the following forms respectively, and the blanks therein shall be filled out and signed as indicated by the words in brackets,—

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§ 18. The following words shall appear on all age and schooling certificates after the name of the town or city and date: This certificate belongs to the person in whose behalf it is drawn, and it shall be surrendered to [him or her] whenever [he or she] leaves the service of the corporation or employer holding the same.



§ 19. In cities and towns having a superintendent of schools, said certificate shall be signed only by such superintendent or by some person authorized by him in writing; in other cities and towns it shall be signed by some member or members of the school committee authorized by a vote thereof: Provided, however, That no member of a school committee, or other person authorized as aforesaid, shall have authority to sign such certificate for any child then in or about to enter his own employment, or the employment of a firm of which he is a member, or of a corporation of which he is an officer or employee. The person signing the certificate shall have authority to administer the oath provided for therein, but no fee shall be charged therefor; such oath may also be administered by any justice of the peace.

§ 20. The certificate as to the birthplace and age of the child shall be signed by his father, if living and a resident of the same city or town; if not, by his mother; or if his mother is not living, or if living is not a resident of the same city or town, by his guardian; if a child has no father, mother or guardian living in the same city or town his own signature to the certificate may be accepted by the person authorized to approve the same.

§ 21. No child who has been continuously a resident of a city or town since reaching the age of thirteen years shall be entitled to receive a certificate that he has reached the age of fourteen unless or until he has attended school according to law in such city or town for at least thirty weeks since reaching the age of thirteen, unless such child can read at sight and write legibly simple sentences in the English language, or is exempt by law from such attendance. Before signing the approval of the certificate of age of a child the person authorized to sign the same shall refer to the last school census taken under the provisions of section three of chapter forty-six of the Public Statutes, and if the name of such child is found therein and there is a material difference between his age as given therein and as given by his parent or guardian in the certificate, allowing for lapse of time, or if such child plainly appears to be of materially less age than that so given, then such certificate shall not be signed until a copy of the certificate of birth or of baptism of such child, or a copy of the register of its birth with a town or city clerk, has been produced, or other satisfactory evidence furnished that such child is of the age stated in the certificate.

§ 22. Any corporation or employer holding any age or schooling certificate shall deliver the same to the person in whose behalf it has been drawn, when such person shall leave the employ of such corporation or employer.

§ 23. The truant officers may, when so authorized and required by vote of the school

committee, visit the factories, workshops and mercantile establishments in their several cities and towns and ascertain whether any children under the age of fourteen are employed therein contrary to the provisions of this act, and they shall report any cases of such illegal employment to the school committee and to the chief of the district police or the inspector of factories for the district. The inspectors of factories and the truant officers when authorized as aforesaid, may demand the names of all children under sixteen years of age employed in such factories, workshops and mercantile establishments, and may require that the certificates and lists of such children provided for in this act shall be produced for their inspection. Such truant officers shall inquire into the employment, otherwise than in such factories, workshops and mercantile establishments, of children under the age of fourteen years, during the hours when the public schools are in session, and may require that the aforesaid certificates of all children under sixteen shall be produced for their inspection, and any such officer or any inspector of factories may bring a prosecution against a person or corporation employing any such child, otherwise than as aforesaid, during the hours when the public schools are in session, contrary to the provisions of this act, if such employment still continues for one week after written notice from such officer or inspector that such prosecution will be brought, or if more than one such written notice, whether relating to the same child or to any other child, has been given to such employer by a truant officer or inspector of factories at any time within one year.

§ 24. No person shall employ or permit to be employed a minor under fourteen years of age, or over, who cannot read and write in the English language, and who resides in a city or town in this commonwealth wherein public evening schools are maintained, and is not a regular attendant of a day school, or has not attained an attendance of seventy per cent. or more of the yearly session of the evening school.

§ 25. Whenever it appears that the labor of any minor who would be debarred from employment under section twenty-four of this act is necessary for the support of the family to which said minor belongs, or for his own support, the school committee of said city or town may, in the exercise of their discretion, issue a permit authorizing the employment of such minor within such time or times as they may fix: Provided, Such minor makes application to said school committee, or some person duly authorized by said committee, for such a permit before the opening of the yearly session of the evening school of said city or town; and the provisions of said section twenty-four shall not apply to such minor so long as said permit is in force; Provided, also, That if such minor has been prevented by sickness or injury from attending said evening

school, as provided in said section, the school committee shall issue to such minor the permit provided for in this section, upon the presentation of the following blank properly filled and signed:

\* \* \* \* \*

The school committee of every city and town in this commonwealth wherein public evening schools are maintained shall furnish blanks in the above form upon application.

§ 26. All children, young persons and women, five or more in number, employed in the same factory, shall be allowed their meal time or meal times at the same hour, except that any children, young persons and women who begin work in such factory at a later hour in the morning than the other children, young persons or women employed therein, may be allowed their meal time or meal times at a different time; but no such children, young persons or women shall be employed during the regular meal hour in tending the machines or doing the work of any other children, young persons or women in addition to their own.

§ 27. No child, young person or woman shall be employed in a factory or workshop in which five or more children, young persons or women are employed, for more than six hours at one time, without an interval of at least half an hour for a meal, but a child, young person or woman may be so employed for not more than six and one-half hours at one time if such employment ends at an hour not later than one o'clock in the afternoon, and if such child, young person or woman is then dismissed from the factory or workshop for the remainder of the day, or for not more than seven and one-half hours at one time, if such child, young person or woman is allowed sufficient opportunity for eating a lunch during the continuance of such employment, and if such employment ends at an hour not later than two o'clock in the afternoon, and such child, young person or woman is then dismissed from the factory or workshop for the remainder of the day.

§ 28. Sections twenty-six and twenty-seven of this act shall not apply to iron works, glass works, paper mills, letter press establishments, print works, bleaching works or dyeing works; and the chief of the district police, where it is proved to his satisfaction that in any other class of factories or workshops it is necessary, by reason of the continuous nature of the processes or of special circumstances affecting such class, to exempt such class from the provisions of this act, and that such exemption can be made without injury to the health of the children, young persons or women affected thereby, may, with the approval of the governor, issue a certificate granting such exemption, public notice whereof shall be given in the manner directed by said chief, without expense to the commonwealth.

§ 29. If any minor under the age of eighteen years or any woman shall, without the orders, consent or knowledge of the employer, or of any superintendent, overseer or other agent of the employer, labor in a factory or workshop during any part of any time allowed for dinner or for other meals in such factory or workshop, according to the notice required by law, and if a copy of such notice was posted in a conspicuous place in the room where such labor took place, together with a rule of the establishment forbidding such minor or woman to labor during such time, then neither the employer, nor any superintendent, overseer or other agent of the employer shall be held responsible for such labor.

§ 30. Every person or corporation employing females in any manufacturing, mechanical or mercantile establishment in this commonwealth shall provide suitable seats for the use of the females so employed, and shall permit the use of such seats by them when they are not necessarily engaged in the active duties for which they are employed.

§ 31. No child under the age of fourteen years shall be permitted to clean any part of the machinery in a factory when such part is in motion by the aid of steam, water or other mechanical power, or to clean any part of such machinery which is in dangerous proximity to such moving part.

§ 32. No person, firm or corporation shall employ or permit any person under fifteen years of age to have the care, custody, management or operation of any elevator, or shall employ or permit any person under eighteen years of age to have the care, custody, management or operation of any elevator running at a speed of over two hundred feet a minute.

§ 33. Every factory in which five or more persons are employed, and every factory, workshop, mercantile or other establishment or office in which two or more children, young persons or women are employed, shall be kept in a cleanly state and free from effluvia arising from any drain, privy or other nuisance, and shall be provided, within reasonable access, with a sufficient number of proper water closets, earth closets or privies for the reasonable use of the persons employed therein; and wherever two or more male persons and two or more female persons are employed as aforesaid together, a sufficient number of separate and distinct water closets, earth closets or privies shall be provided for the use of each sex, and plainly so designated; and no person shall be allowed to use any such closet or privy assigned to persons of the other sex.

§ 34. It shall be the duty of every owner, lessee or occupant of any premises so used as to come within the provisions of section thirty-three of this act, to carry out the same and to make the changes necessary therefor. In case such changes are made upon the order of an inspector of factories by the occupant or lessee of the premises, he may



at any time within thirty days of the completion thereof bring an action before any trial justice, police, municipal or district court against any other person having an interest in such premises, and may recover such proportion of the expense of making such changes as the court adjudges should justly and equitably be borne by such defendant.

§ 35. When it appears to an inspector of factories that any act, neglect or fault in relation to any drain, water closet, earth closet, privy, ashpit, water supply, nuisance or other matter in a factory or in a workshop included under section thirty-three of this act, is punishable or remediable under chapter eighty of the Public Statutes, or under any law of the commonwealth relating to the preservation of the public health, but not under this act, such inspector shall give notice in writing of such act, neglect or default, to the board of health of the city or town within which such factory or workshop is situated; and it shall thereupon be the duty of such board of health to make inquiry into the subject of the notice and to enforce the laws relative thereto.

§ 36. No criminal prosecution shall be instituted against any person for a violation of the provisions of sections thirty-three and thirty-four of this act until four weeks after notice in writing by an inspector of factories of the changes necessary to be made to comply with the provisions of said sections has been sent by mail or delivered to such person, nor then, if in the meantime such changes have been made in accordance with such notification. A notice shall be deemed a sufficient notice under this section to all members of a firm or to a corporation when given to one member of such firm, or to the clerk, cashier, secretary, agent or any other officer having charge of the business of such corporation, or to its attorney; and in case of a foreign corporation notice to the officer having the charge of such factory or workshop shall be sufficient; and such officer shall be personally liable for the amount of any fine in case a judgment against the corporation is returned unsatisfied.

§ 37. Every factory in which five or more persons are employed, and every workshop in which five or more children, young persons or women are employed shall, while work is carried on therein, be so ventilated that the air shall not become so exhausted or impure as to be injurious to the health of the persons employed therein, and shall also be so ventilated as to render harmless so far as is practicable, all gases, vapors, dust or other impurities generated in the course of the manufacturing process or handicraft carried on therein, which may be injurious to health.

§ 38. If in a workshop or factory included in section thirty-seven of this act any process is carried on by which dust is generated and inhaled to an injurious extent by the per-

sons employed therein, and it appears to an inspector of factories that such inhalation could be to a great extent prevented by the use of a fan or by other mechanical means, and that the same can be provided without incurring unreasonable expense, such inspector may direct a fan or other mechanical means of a proper construction to be provided within a reasonable time, and such fan or other mechanical means shall be so provided, maintained and used.

§ 39. No criminal prosecution shall be instituted for any violation of the provisions of sections thirty-seven and thirty-eight of this act unless such employer shall have neglected for four weeks to make such changes in his factory or workshop as shall have been ordered by an inspector of factories, by a notice in writing delivered to or received by such employer.

\* \* \* \* \*  
§ 51. Every manufacturing, mining or quarrying, mercantile, railroad, street railway, telegraph and telephone corporation, every incorporated express company and water company shall pay weekly each employee engaged in its business the wages earned by such employee to within six days of the date of said payment; \* \* \*

§ 52. The chief of the district police or any inspector of factories and public buildings may bring a complaint against any corporation which neglects to comply with the provisions of the preceding section. Complaints for such violations shall be made within thirty days from the date thereof. On the trial of such complaint such corporation shall not be allowed to set up any defense for a failure to pay weekly any employee engaged in its business the wages earned by such employee to within six days of the date when such payment should have been made, other than the attachment of such wages by the trustee process, or a valid assignment thereof, or a valid set-off against the same, or the absence of the employee from his regular place of labor at the time of payment, or an actual tender to such employee at the time of payment of the wages so earned by him. The corporation shall not be allowed to set up as a defense any payment of wages after the bringing of the complaint. No assignment of future wages, payable weekly under the provisions of this act, shall be valid if made to the corporation from whom such wages are to become due, or to any person on behalf of such corporation, or if made or procured to be made to any person for the purpose of relieving such corporation from the obligation to pay weekly under the provisions of this act.

§ 53. When a corporation against which a complaint is made under the preceding section fails to appear after being duly served with process, its default shall be recorded, the allegations in the complaint taken to be true, and judgment shall be rendered accordingly.



§ 54. When judgment is rendered upon any such complaint against a corporation the court may issue a warrant of distress to compel the payment of the penalty prescribed by law, together with costs and interest.

§ 55. The system of grading their work now or at any time hereafter used by manufacturers shall in no way affect or lessen the wages of a weaver, except for imperfections in his own work; and in no case shall the wages of those engaged in weaving be affected by fines or otherwise, unless the imperfections complained of are first exhibited and pointed out to the person or persons whose wages are to be affected; and no fine or fines shall be imposed upon any person for imperfect weaving, unless the provisions of this section are first complied with and the amount of the fines are agreed upon by both parties.

\* \* \* \* \*

§ 57. The following expressions used in this act shall have the following meanings:

The expression "person" means any individual, corporation, partnership, company or association.

The expression "child" means a person under the age of fourteen years.

The expression "young person" means a person of the age of fourteen years and under the age of eighteen years.

The expression "woman" means a woman of eighteen years of age and upward.

The expression "factory" means any premises where steam, water or other mechanical power is used in aid of any manufacturing process there carried on.

The expression "workshop" means any premises, room or place, not being a factory as above defined, wherein any manual labor is exercised by way of trade or for purposes of gain in or incidental to any process of making, altering, repairing, ornamenting, finishing or adapting for sale any article or part of an article, and to which or over which premises, room or place, the employer of the persons working therein has the right of access or control: Provided, however, That the exercise of such manual labor in a private house or private room by the family dwelling therein or by any of them, or in case a majority of the persons therein employed are members of such family, shall not of itself constitute such house or room a workshop within this definition.

The expression "iron works" means any mill, forge or other premises in or on which any process is carried on for converting iron into malleable iron, steel or tin plate, or for otherwise making or converting steel.

The expression "glass works" means any premises in which the manufacture of glass is carried on.

The expression "paper mills" means any premises in which the manufacture of paper is carried on.

The expression "letter-press establishment" means any premises in which the process of letter-press printing is carried on.

The expression "print works" means any premises in which is carried on the process of printing figures, patterns or designs upon any cotton, linen, woolen, worsted or silken yarn or cloth, or upon any woven or felted fabric not being paper.

The expression "bleaching works" means any premises in which the process of bleaching any yarn or cloth of any material is carried on.

The expression "dyeing works" means any premises in which the process of dyeing any yarn or cloth of any material is carried on.

The expression "public building" means any building or premises used as a place of public entertainment, instruction, resort or assemblage.

The expression "schoolhouse" means any building or premises in which public or private instruction is afforded to not less than ten pupils at one time.

The aforesaid expressions shall have the meanings above defined for them respectively in all laws of this commonwealth, relating to the employment of labor, whether heretofore or hereafter enacted, unless a different meaning is plainly required by the context.

\* \* \* \* \*

§ 59. Any person making a false report of the stopping of machinery under section eleven of this act shall be punished by fine not exceeding one hundred dollars and not less than fifty dollars.

§ 60. Any \* \* \* corporation, \* \* \* employing or having in its employment any person in violation of sections ten and eleven of this act, \* \* \* and any such corporation, \* \* \* failing to post the notice required by section eleven of this act, shall be punished by fine not exceeding one hundred dollars and not less than fifty dollars for each offense.

§ 61. A certificate of the age of a minor made and sworn to by him and by his parent or guardian at the time of his employment in a mercantile establishment shall be prima facie evidence of his age in any prosecution under the preceding section.

\* \* \* \* \*

§ 65. Any corporation violating the provisions of section fifty-one of this act, requiring the weekly payment of wages, shall be punished by fine not exceeding fifty dollars and not less than ten dollars.

§ 66. Any person who is convicted a second time of a violation of the provisions of section fifty-five of this act, as to weavers' wages, shall be punished by fine not exceeding three hundred dollars.

§ 67. \* \* \* Any \* \* \* person who employs any child contrary to the provisions of this act, shall for every such offense forfeit not less than twenty nor more than fifty

Employment of labor; foreign corporations — Acts, 1894, ch. 508, §§ 68-80; ch. 541.

dollars for the use of the public schools of the city or town. A failure to produce to a truant officer or inspector of factories the certificate required by the provisions of this act shall be prima facie evidence of the illegal employment of the child whose certificate is not produced.

§ 68. Any \* \* \* corporation or officer or agent thereof, employing any woman or minor in violation of section twelve of this act, shall be punished by fine not exceeding fifty dollars and not less than twenty dollars for each offense.

§ 69. Any corporation \* \* \* retaining any age or schooling certificate in violation of section twenty-two of this act shall be punished by fine of ten dollars.

§ 70. Any person who employs or permits to be employed a minor in violation of the provisions of section twenty-four of this act shall for each offense forfeit not less than fifty nor more than one hundred dollars for the use of the evening schools of such city or town.

§ 71. Whoever, \* \* \* violates the provisions of sections twenty-six, twenty-seven, twenty-eight or twenty-nine of this act, as to meal hours, shall be punished by fine not exceeding one hundred dollars and not less than fifty dollars.

§ 72. Any \* \* \* corporation violating the provisions of section thirty of this act, as to seats for females, shall be punished by fine not exceeding thirty dollars and not less than ten dollars for each offense.

§ 73. Whoever, \* \* \* violates the provisions of section thirty-one of this act, as to cleaning of dangerous machinery, shall be punished by fine not exceeding one hundred dollars and not less than fifty dollars for each offense.

§ 74. Whoever violates the provisions of section thirty-two of this act, as to the care of elevators, shall be punished by fine not exceeding one hundred dollars and not less than twenty-five dollars for each offense.

§ 75. Any \* \* \* corporation, or person, neglecting for four weeks to obey an order from an inspector under section forty-two of this act, shall be punished by fine not exceeding one hundred dollars.

§ 76. Any \* \* \* corporation violating the provisions of sections forty-four to forty-eight inclusive of this act, shall be punished by fine not exceeding five hundred dollars and not less than fifty dollars.

§ 77. Any \* \* \* corporation neglecting or refusing to comply with the provisions of section fifty-two of this act shall be punished by fine not exceeding fifty dollars and not less than ten dollars.

§ 78. Any person violating any provision of this act where no special provision as to the penalty for such violation is made shall be punished by fine not exceeding one hundred dollars.

\* \* \* \* \*

§ 80. Sections eight and nine of chapter forty-eight, and sections one, two and three of chapter seventy-four of the Public Statutes; chapter one hundred and fifty of the acts of the year eighteen hundred and eighty-two; chapter two hundred and seventy-five of the acts of the year eighteen hundred and eighty-four; chapter eighty-seven of the acts of the year eighteen hundred and eighty-six; chapters one hundred and three, one hundred and twenty-one, one hundred and seventy-three, two hundred and fifteen, two hundred and eighty, three hundred and thirty and three hundred and ninety-nine of the acts of the year eighteen hundred and eighty-seven; chapters one hundred and forty-nine, three hundred and five and three hundred and forty-eight of the acts of the year eighteen hundred and eighty-eight; chapter two hundred and ninety-one of the acts of the year eighteen hundred and eighty-nine; chapters forty-eight, ninety, and two hundred and ninety-nine of the acts of the year eighteen hundred and ninety; chapters two hundred and thirty-nine, three hundred and seventeen, three hundred and fifty and three hundred and fifty-seven, except section six, of the acts of the year eighteen hundred and ninety-one; chapters eighty-three, two hundred and ten, two hundred and ninety-six, three hundred and thirty, three hundred and fifty-two, three hundred and fifty-seven and four hundred and ten of the acts of the year eighteen hundred and ninety-two, and chapters two hundred and forty-six, three hundred and eighty-six and four hundred and six of the acts of the year eighteen hundred and ninety-three, and all acts and parts of acts inconsistent herewith, are hereby repealed.

(Approved June 22, 1894.)

Inspection of buildings. Ch. 104, §§ 13, 14. Corporation bringing strangers into State. Ch. 86, § 12. Means of communication between rooms. Acts of 1886, ch. 173. Reports of accidents in factories. Acts of 1886, ch. 290. Operation of above act extended by Acts of 1895, ch. 438.

[A corporation is not liable to a penalty imposed upon an agent or superintendent "or owner" of a manufacturing establishment, for employing children and laboring longer than the statute allows. *Benson v. Monson*, (9 Met.) 50 Mass. 562.

As to the rule of the statute now in force, see *Comm. v. Osborn Mill*, 130 Mass. 33.]

#### Acts of 1894, ch. 541.

AN ACT relative to foreign corporations having a usual place of business in this commonwealth.

Be it enacted, etc., as follows:

Section 1. Every corporation which shall omit to file the annual statement required by section one of chapter three hundred and forty-one of the acts of the years eighteen hundred and ninety-one shall forfeit not less than five nor more than ten dollars for each and every day for fifteen days after the first day of April, and not less than ten



Fees; wages; bonds of treasurers — Acts, 1895; chs. 169, 438; 1896, ch. 346.

nor more than two hundred dollars for each and every day thereafter while said omission continues, to be recovered by an information brought in the supreme judicial court in the name of the attorney-general, at the relation of the commissioner of corporations; and upon such information the court may issue an injunction restraining the further prosecution of the business of the corporation named therein until the sums so forfeited are paid with interest and costs, and until the returns required by this act are made.

§ 2. Section two of chapter three hundred and forty-one of the acts of the year eighteen hundred and ninety-one is hereby repealed, but this repeal shall not affect any proceeding now pending, or the liability of any corporation for any omission heretofore made, or from any forfeiture to which it has become liable under the provisions of said section.

§ 3. Upon any information brought under the provisions of section one of this chapter, or which may have been brought under the provisions of section two of chapter three hundred and forty-one of the acts of the year eighteen hundred and ninety-one, any justice of the supreme judicial court may issue a preliminary injunction, restraining such corporation from the further prosecution of its business within this commonwealth during the pendency of said suit.

§ 4. It shall be the duty of the commissioner of corporations to forthwith notify in writing any such corporation of its failure to file such statement, which notice shall contain a copy of this act.

§ 5. This act shall take effect upon its passage.

(Approved June 30, 1894.)

See Acts of 1884, ch. 230, and cross-references.

#### Resolves of 1894, ch. 31.

RESOLVE providing for an index to the certificates of corporations filed in the office of the secretary of the commonwealth.

Resolved, That there be allowed and paid out of the treasury of the commonwealth a sum not exceeding six hundred dollars, for the purpose of making an index of certificates of corporations filed under general laws from the year eighteen hundred and fifty-one up to the present time, in the office of the secretary of the commonwealth, the same to be in addition to the amount authorized by chapter thirty-two of the resolves of the year eighteen hundred and ninety-three.

(Approved March 2, 1894.)

See ch. 106, § 14; Resolves of 1893, ch. 32.

#### Acts of 1895, ch. 169.

AN ACT to establish the fees to be paid by corporations for filing and recording certain certificates.

Be it enacted, etc., as follows:

Section 1. The fee to be paid by corporations for filing and recording the certificates

required by sections fifty-one and fifty-two of chapter one hundred and six of the Public Statutes shall be one dollar for each certificate.

§ 2. All acts and parts of acts inconsistent herewith are hereby repealed.

§ 3. This act shall take effect upon its passage.

(Approved March 27, 1895.)

See ch. 106, § 84.

#### Acts of 1895, ch. 438.

AN ACT relative to the weekly payment of wages.

Be it enacted, etc., as follows:

Section 1. (As amended acts 1898, chapter 481.) Sections fifty-one to fifty-four, inclusive, of chapter five hundred and eight of the acts of the year eighteen hundred and ninety-four, relative to the weekly payment of wages by corporations, shall apply to all contractors and to any person or partnership engaged in this commonwealth in any manufacturing business. And the word "corporation," as used in said sections, shall include such contractors, persons and partnerships.

§ 2. This act shall take effect upon its passage.

(Approved May 31, 1895.)

#### Acts of 1896, ch. 346.

AN ACT relative to the bonds of treasurers of manufacturing and other corporations.

Be it enacted, etc., as follows:

Section 1. Whenever, under the provisions of section twenty-six of chapter one hundred and six of the Public Statutes, it becomes necessary for the treasurer of a manufacturing or other corporation subject to the provisions of said chapter and of acts amendatory thereof, to give bond for the faithful discharge of his duty, he may give a bond in which any company organized under the laws of this State, or chartered by any other State or government, to transact fidelity insurance or corporate suretyship, and authorized to do business in this commonwealth, may be surety, or may be jointly and severally bound with such treasurer or with any other officer or employee. Such bond shall be in a form to be approved by the commissioner of corporations, and an attested copy thereof, with a certificate of the custodian that the original is in his possession, shall be filed with the commissioner of corporations.

§ 2. This act shall take effect upon its passage.

(Approved April 28, 1896.)

See ch. 106, § 26.

[The giving of the treasurer's bond is not a condition precedent to the organization of a corporation, or the right to sue. *Boston Co. v. Moring*, (15 Gray) 81 Mass. 211.]



Annual returns; liabilities of officers, etc.; fees — Acts, 1896, chs. 369, 391, 523.

**Acts of 1896, ch. 369.**

AN ACT relative to annual returns from certain corporations.

Be it enacted, etc., as follows:

Section 1. Every corporation chartered by this commonwealth, or organized under the general laws, for the purposes of business or profit, having a capital stock divided into shares, except banks, co-operative banks, savings banks and institutions for savings, insurance companies, including the Massachusetts Hospital Life Insurance Company, steam and street railway companies, safe deposit and trust companies and the Collateral Loan Company, shall be subject to the provisions of sections fifty-four, fifty-five, fifty-nine, eighty-one, eighty-two and eighty-four of chapter one hundred and six of the Public Statutes, and shall annually make and file the certificates and returns therein required.

§ 2. This act shall take effect on the first day of July in the year eighteen hundred and ninety-six.

(Approved May 5, 1896.)

See ch. 106, § 54. Fee for filing certificates. Ch. 106, § 84.

**Acts of 1896, ch. 391.**

AN ACT relative to the paying in of capital stock and to the liability of officers and stockholders of foreign corporations doing business in this commonwealth.

Be it enacted, etc., as follows:

Section 1. The officers and members or stockholders in any corporation established under the laws of any other State or foreign country, and hereafter and not now having a usual place of business in this commonwealth, shall be jointly and severally liable for its debts and contracts, on the same conditions and in the same manner as provided in the case of domestic corporations, by sections sixty to seventy-one inclusive of chapter one hundred and six of the Public Statutes; but the liability under clause four of said section sixty shall not apply in the case of foreign corporations.

§ 2. (As amended May 22, 1897; Acts of 1897, chapter 423.) If the capital stock of any corporation subject to section one of this act has been paid in by a conveyance to the corporation of property, real or personal, the officers, members or stockholders of such corporation shall be jointly and severally liable for its debts or contracts, if said property is not conveyed and taken at a fair valuation. But only those officers or stockholders who participate in the conveyance or taking of such property at such unfair valuation, or those stockholders who have purchased or received their shares

with knowledge of said fact, shall be liable for such debts: Provided, however, That no such officer, member or stockholder shall be liable hereunder for, and this act shall not apply to, any bonded indebtedness or mortgage debt of such corporation. The extent and manner of enforcing such liability shall be the same as provided in sections sixty to seventy-one inclusive of chapter one hundred and six of the Public Statutes in the case of domestic corporations.

§ 3. This act shall take effect upon its passage.

(Approved May 12, 1896.)

See ch. 106, §§ 46, 47, 60.

**Acts of 1896, ch. 523.**

AN ACT relative to the payment of certain fees in the office of the secretary of the commonwealth.

Be it enacted, etc., as follows:

Section 1. The fee to be paid by corporations for filing and recording in the office of the secretary of the commonwealth any certificate, the payment of a fee for which is not already expressly provided for by law, shall be one dollar. This provision shall apply also to the filing and recording of certificates of limited partnership, under the provisions of chapter seventy-five of the Public Statutes, and to the certificate of change of name of corporations required to be issued under the provisions of section three of chapter three hundred and sixty of the acts of the year eighteen hundred and ninety-one.

§ 2. The second clause of section eighty-four of chapter one hundred and six of the Public Statutes is hereby amended by adding after the word "dollars," in the sixth line, the following words: Provided, That a corporation which has paid two hundred dollars in the manner herein set forth shall pay a fee of one dollar for each certificate thereafter filed and recorded under the provisions of said section fifty-six, so as to read as follows: For filing and recording the certificate required by section fifty-six, one-twentieth of one per cent. of the amount by which the capital is increased; but the amount so to be paid shall not, when added to the amount previously paid for filing and recording certificates under sections twenty-one, twenty-two, and fifty-six, exceed in any case two hundred dollars: Provided, That a corporation which has paid two hundred dollars in the manner herein set forth shall pay a fee of one dollar for each certificate thereafter filed and recorded under the provisions of said section fifty-six.

§ 3. This act shall take effect upon its passage.

(Approved June 9, 1896.)

See ch. 106, § 84.

Composition with creditors; certificates and returns — Acts, 1897, chs. 247, 492.

**Acts of 1897, ch. 247.**

AN ACT relative to composition in insolvency with the creditors of Massachusetts corporations.

Be it enacted, etc., as follows:

Section 1. The provisions of chapter two hundred and thirty-six of the acts of the year eighteen hundred and eighty-four, relative to composition with creditors in insolvency, and all acts in amendment thereof and in addition thereto, shall apply to all corporations organized under the laws of this commonwealth and having a capital stock divided into shares.

§ 2. Nothing contained in this act shall be construed to release any officer or stockholder of a corporation from any liability arising under the provisions of sections sixty and sixty-one of chapter one hundred and six of the Public Statutes, but in the event of any such corporation applying for a discharge from its debts by virtue of this act any creditor may, at any time after the filing of the offer in composition, file a bill in equity in behalf of himself and other creditors of the corporation, against it and all persons who were stockholders therein at the time of the filing of the petition in insolvency by or against the corporation, or against all the officers liable for its debts and contracts, for the recovery of the sums due from the corporation to himself and the other creditors for which the stockholders or officers may be personally liable, by reason of any act or omission on its part or on that of its officers or any of them, setting forth the nature of his claim and the grounds upon which it is expected to charge the stockholders or officers personally. In such a bill it shall not be necessary to allege or prove any judgment against the corporation or the return of an execution unsatisfied. If the ground upon which it is expected to charge the officers of the corporation is an excess of debts above the capital stock, the extent of such excess shall be taken to be that existing at the time of the filing of the petition in insolvency by or against said corporation.

§ 3. If at the time of the filing of the offer in composition by any corporation under this act a suit is pending against such corporation, on behalf of any creditor who would be entitled to enforce a liability against the officers or stockholders of the corporation under the provisions of chapter one hundred and six of the Public Statutes, the plaintiff in such suit may change his action into a bill in equity, making parties to the said bill the stockholders and officers who were such at the time of the filing of the petition in insolvency by or against the corporation, and may proceed thereafter in like manner as is provided in section two of this act. If the ground upon which it is expected to charge the officers of the corporation is an excess of debts above the capital

stock, the extent of such excess shall be taken to be that existing at the time of said suit.

§ 4. A corporation making an offer of composition under this act shall file, at the time of filing the schedules of assets and liabilities, a schedule of all its officers and stockholders who were such at the time of the filing of the petition in insolvency by or against the said corporation, together with the holdings of stock at such time.

§ 5. After the filing of the bill in equity, as provided in sections two and three of this act, such suit in equity shall proceed in the manner and subject to the provisions of sections sixty-five to sixty-nine inclusive, of chapter one hundred and six of the Public Statutes.

§ 6. Section fifteen of chapter two hundred and thirty-six of the acts of the year eighteen hundred and eighty-four is hereby repealed.

(Approved April 7, 1897.)

**Acts of 1897, ch. 492.**

AN ACT relative to certificates and returns of corporations.

Be it enacted, etc., as follows:

Section 1. Every corporation whose capital stock is one hundred thousand dollars or more, which is required to file a certificate of its condition annually with the secretary of the commonwealth by section fifty-four of chapter one hundred and six of the Public Statutes, chapter two hundred and twenty-five of the acts of the year eighteen hundred and eighty-seven, as amended by chapter three hundred and sixty-nine of the acts of the year eighteen hundred and ninety-six, or chapter three hundred and forty-one of the acts of the year eighteen hundred and ninety-one, shall cause such certificate to be accompanied by a written statement made under oath by an auditor to be employed by a committee of three stockholders who are not directors, selected at the annual meeting of the stockholders, stating that the certificate aforesaid represents the true condition of the affairs of said corporation as disclosed by its books at the time of making such audit; and said sworn statement made by said auditor shall be attached to and form a part of said certificate, and shall be filed by such auditor with said certificate in the office of the secretary of the commonwealth: Provided, however, That where less than three stockholders exist outside of the directors, then the employment of such auditor shall be made by the directors of such corporation.

§ 2. (As amended by Acts of 1898, chapter 64.) Every auditor appointed under the provisions of this act shall be sworn to the faithful performance of his duties by some justice of the peace or other magistrate duly authorized to administer oaths or affir-

mations; and evidence of such appointment and qualification shall be filed in the office of the commissioner of corporations.

(Approved June 10, 1897.)

**Acts of 1898, ch. 505.**

AN ACT to prohibit deductions in the wages of women and minors employed in manufacturing and mechanical establishments.

Be it enacted, etc., as follows:

Section 1. No deductions shall be made in the wages of women and minors who are paid by the day or hour, employed in manufacturing or mechanical establishments, for time during which the machinery is stopped, if said women and minors were refused the privilege of leaving the mill while the damage to said machinery was being repaired; and none of the employes referred to in this section shall be compelled to make up time lost or through the breaking down of machinery, unless said employes are compensated at their regular rates of wages: Provided, That said employes have been detained within their workrooms during the time of such breakdown.

§ 2. Any person, corporation, officer or agent who violates the provisions of this act shall be punished by fine not exceeding twenty dollars for each offense.

(Approved June 6, 1893.)

**Acts of 1898, ch. 565.**

AN ACT relative to the liability of persons and corporations for negligence resulting in the death of persons not in their employ.

Be it enacted, etc., as follows:

If, by reason of the negligence or carelessness of any person or corporation, or of the gross negligence or carelessness of any servant or agent of any person or corporation while engaged in the business of such person or corporation, the life of a person who is exercising due diligence and who is not in the employ or service of such person or corporation is hereafter lost, such person or corporation shall be liable in damages not exceeding five thousand dollars nor less than five hundred dollars, to be assessed with reference to the degree of culpability of such person or corporation, or of the servants or agents of such person or corporation, and to be recovered in an action of tort commenced within one year from the injury which caused death, by the executor or administrator of the deceased person, for the use of the widow and children of the deceased in equal moieties; or if there are no children, to the use of the widow; or if there is no widow, to the use of the next of kin.

(Approved June 23, 1893.)



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# MICHIGAN.

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# MICHIGAN.

## CONSTITUTION OF MICHIGAN—1850.

### PROVISIONS RELATING TO CORPORATIONS.

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#### ARTICLE IV.

##### Legislative Department.

§ 43. The legislature shall pass no \* \* \* law impairing the obligation of contracts.

See art. XV, §§ 1, 8. Acts of incorporation may be repealed, when. § 4879.

[The charter of a corporation is a contract with the State, and if it contains no reservation of a power to repeal its repeal is a violation of above

section. *Bank v. Hastings*, 1 Doug. 225; *Filnt, etc., Co. v. Woodhull*, 25 Mich. 99.

An act imposing a special tax upon a corporation whose charter is silent as to taxation is not a law violating the obligation of a contract. *People v. Detroit, etc. Co.*, 1 Mich. 458.

It seems that an act subsequent to a charter which would subject the corporation to a total forfeiture for that which under the charter was cause for a partial forfeiture only, is unconstitutional. *People v. Jackson, etc., Co.*, 9 Mich. 285. So, also, if it imports a new and additional term into the charter, and impose a forfeiture of the franchise for a violation thereof. *Id.*

All doubts arising under above section will be solved in favor of the State. *Detroit v. Detroit, etc., Co.*, 43 Mich. 141; s. c., 5 N. W. Rep. 275.

Constitutions are to be strictly construed, especially with reference to the restrictions which they place upon legislatures. *Brooks v. Hyborn*, 76 Mich. 273; s. c., 42 N. W. Rep. 1122.

Legislative power to regulate tolls or rates of fare to be charged by corporations which have devoted their property to a public use has been settled in this State. *Stimson v. Booming Co.*, 100 Mich. 347; s. c., 59 N. W. Rep. 142.]

#### ARTICLE XIV.

##### Finances and Taxation.

§ 6. The credit of the State shall not be granted to, or in aid of, any person, association or corporation.

[See *People v. Salem*, 20 Mich. 452; *Bay City v. State Treasurer*, 23 *Id.* 499; *Thomas v. Port Huron*, 27 *Id.* 320.]

§ 8. The State shall not subscribe to, or be interested in, the stock of any company, association or corporation.

#### ARTICLE XV.

##### Corporations.

Section 1. Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes. All laws passed pursuant to this section may be amended, altered or repealed. But the legislature may, by a vote of two-thirds of the members elected to each house, create a single bank, with branches.

See art. IV, § 43, note and cross-references. Incorporation of manufacturing companies. § 4161a.

[Corporations exist only by force of expressed law. *Schuetzen Bund v. Agitations Verein*, 44 Mich. 313; s. c., 6 N. W. Rep. 675.

## Corporations — Const., Art. xv, §§ 2-7.

A corporation cannot be created by the joint act of several States unless by contract or treaty. *R. R. Co. v. Auditor-General*, 53 Mich. 79; s. c., 18 N. W. Rep. 586.

The State has same power to authorize consolidation of corporations as it has to incorporate individuals. *State Treasurer v. Auditor-General*, 46 Mich. 224; s. c., 9 N. W. Rep. 258.

All private corporations must be organized under general laws and can be valid only when strictly conforming to all the conditions imposed on their completion. *Doyle v. Mizner*, 42 Mich. 332; s. c., 3 N. W. Rep. 968.

An incorporation act cannot be extended by construction to cases not reasonably within its terms. *Stewart v. Society*, 41 Mich. 67; s. c., 1 N. W. Rep. 931.

The general law under which a corporation is organized, and its articles of association, taken together, constitute its charter, acceptance of which charges corporators with knowledge of all duties and liabilities prescribed thereby. *Van Etten v. Eaton*, 19 Mich. 187; *Mason v. Perkins*, 73 id. 303; s. c., 41 N. W. Rep. 426. And its powers and privileges depend on such law and articles. *Dewey v. Mfg. Co.*, 42 Mich. 399; s. c., 4 N. W. Rep. 179.

The reserved right to alter or amend charters does not authorize legislature to add requirements inconsistent with constitutional principles, as by depriving it of its property without due process of law. *Detroit v. Detroit, etc., Co.*, 43 Mich. 140; s. c., 5 N. W. Rep. 275.

Question whether charter has been violated is judicial, and charter cannot be repealed until the violation has been made to appear to the legislature by some proper judicial proceeding. *Id.*; *R. Co. v. Woodhull*, 25 Mich. 99; *Tripp v. R. R. Co.*, 66 id. 1; s. c., 32 N. W. Rep. 907.

An amendment to a general law that had been embodied in the charter of a private corporation cannot change such charter unless charter is itself subject to amendment. *Id.*

Charter cannot be repealed or amended by any statute that does not directly refer to it. *Grand Rapids v. Hydraulic Co.*, 66 Mich. 606; s. c., 33 N. W. Rep. 749.

An act repealing a charter need not, in naming the corporation, correspond exactly with the act of incorporation. *People v. Bank*, 1 Doug. 282.

No corporation in this State can exist unless created by law, and when called upon by the people to show by what authority it exercises franchises and privileges, it must show a valid enactment of the legislature for its authority. *Mason v. Perkins*, 73 Mich. 303; s. c., 41 N. W. Rep. 426.

A corporation de facto cannot exist in the absence of a law authorizing its organization, and in such case the carrying on of the business in the corporate name is no evidence of user which can be considered in aid of corporate existence. *Eaton v. Walker*, 76 Mich. 579; s. c., 43 N. W. Rep. 638.

Identity of membership does not merge one corporation in another. *Mason v. Finch*, 28 Mich. 282.

The legislature cannot compel any person to become incorporated without his consent. *Id.*

The transfer of the assets of one corporation to another does not establish any legal identity between them. *Tawas, etc., Co. v. Josco*, 44 Mich. 479; s. c., 7 N. W. Rep. 65.

There is no common-law rule by which property can be transferred by one corporation to another without grant. *Board of Health v. East Saginaw*, 45 Mich. 257; s. c., 7 N. W. Rep. 808.

On foreclosure sale of a mortgage of the property, rights and franchises of a corporation, the purchaser acquires the same rights and privileges as were held by the corporation, and subject to same terms and conditions, and may transfer them to any other corporation capable of taking and exercising such franchises. *Detroit v. Gas Light Co.*, 43 Mich. 594; s. c., 5 N. W. Rep. 1039.

It is not within legislative power, under above section, to confer upon one corporation rights which, under same circumstances, it denied to another, or to confer greater rights and privileges upon one corporation than upon another.

*Stimson v. Booming Co.*, 100 Mich. 347; s. c., 59 N. W. Rep. 142.

Proceedings to incorporate under a general law must conform strictly to the statute. *Doyle v. Mizner*, 42 Mich. 332; s. c., 3 N. W. Rep. 968. As to acts authorizing corporations of one class to organize under laws providing for another class, see *Mok v. B. & S. Assn.*, 30 Mich. 511.

Corporations created by consolidation are new corporations within above section, whose charters may be amended, altered or repealed by the legislature. *Smith v. L. S. & M. S. Ry. Co.*, 72 N. W. Rep. 328.

§ 2. No general banking law shall have effect until the same shall, after its passage, be submitted to a vote of the electors of the State at a general election, and be approved by a majority of the votes cast thereon at such election.

§ 3. The officers and stockholders of every corporation or association for banking purposes, issuing bank notes or paper credits, to circulate as money, shall be individually liable for all debts contracted during the term of their being officers or stockholders of such corporation or association, equally and ratably to the extent of their respective shares of stock in any such corporation or association.

See art. XV, § 7, and cross-references.

§ 4. For all banks organized under general laws, the legislature shall provide for the registry of all bills or notes issued or put in circulation as money, and shall require security to the full amount of notes and bills so registered in State or United States stocks, bearing interest, which shall be deposited with the State treasurer for the redemption of such bills or notes, in specie.

§ 5. In case of the insolvency of any bank or banking association, the bill-holders thereof shall be entitled to preference in payment over all other creditors of such bank or association.

Order in which debts are to be paid. § 8195.

§ 6. The legislature shall pass no law authorizing or sanctioning the suspension of specie payments by any person, association or corporation.

§ 7. The stockholders of all corporations and joint-stock associations shall be individually liable for all labor performed for such corporation or association.

See art. XV, § 3. Liability of stockholders. § 4161c. Directors liable, when. §§ 4161c1, 4161c2. Liability for labor debts. § 4161c8. Holders of preferred stock not liable. § 4161d6, note. Stockholders, when liable, and enforcement of liability. §§ 4886-4899. Proceedings against directors and stockholders in chancery. §§ 8160-8172.

[Legislature may prescribe means of enforcing the constitutional liability of stockholders for labor debts. *Milroy v. Mining Co.*, 43 Mich. 231; s. c., 5 N. W. Rep. 287.



## Corporations — Const., Art. xv, §§ 8-12, 15.

The individual liability for labor debts imposed on stockholders by above section means a liability beyond that of members of the corporation and does not refer to their several liabilities. *Id.* The legislature may prescribe the means of enforcing this liability. *Id.* Contractors and subcontractors are not "laborers" within meaning of above section. *R. R. Co. v. Sturgis*, 44 Mich. 538; s. c., 7 N. W. Rep. 213. Nor is a traveling salesman. *Jones v. Avery*, 50 Mich. 326; s. c., 15 N. W. Rep. 494.

Stockholders are only secondarily, not primarily, liable for labor debts. *Hanson v. Donkersley*, 37 Mich. 184; *Peck v. Miller*, 39 Id. 594; *Milroy v. Mining Co.*, supra. Hence the stockholder's liability is discharged if the creditor extends the time of payment and accepts the corporation's note. *Hanson v. Donkersley*, supra. Or if orders issued by the corporation to the laborers are extended. *Powell v. Eldred*, 39 Mich. 552.

A stockholder is not liable as for a labor debt for money due under a contract with the corporation, whereby the contractor is to carry on certain quarrying operations at his own expense and for a period of years, and deliver rock to the corporation at certain rates. *Taylor v. Manwaring*, 48 Mich. 171; s. c., 12 N. W. Rep. 28.

A mercantile firm, upon which orders were drawn by a corporation for its laborers, cannot enforce the liability of a stockholder as for a labor debt. *Beecher v. Dacey*, 45 Mich. 92; s. c., 7 N. W. Rep. 689.

Where a stockholder's liability for a labor debt depended upon his having been a stockholder when the debt accrued, it is enough, in absence of other testimony, to show that he had admitted being a stockholder before that date, and that the stock-books showed no subsequent transfer. *Tilden v. Young*, 39 Mich. 58.

The constitutional liability of stockholders for labor debts of the corporation can be enforced only in equity, if it can be enforced at all without legislation. *Peck v. Miller*, 39 Mich. 594.

A declaration against a stockholder upon a labor claim must show the nature of the work and when it was done. *Peterson v. Tilden*, 44 Mich. 168; s. c., 6 N. W. Rep. 217.

The general and collecting agent of a manufacturing corporation, who occasionally performs some labor in fixing machines that have been sold, is not a "laborer" within above section. Appeal of *Clark*, 100 Mich. 448; s. c., 59 N. W. Rep. 150.]

§ 8. The legislature shall pass no law altering or amending any act of incorporation heretofore granted, without the assent of two-thirds of the members elected to each house; nor shall any such act be renewed or extended. This restriction shall not apply to municipal corporations.

Notice for charter. Art. XV, § 16. Alteration of charters. *Id.*, § 1; art. IV, § 43. Amendment of articles. § 4161d6. Acts which may be repealed. § 4879.

[All doubts as to whether above section is violated will be solved in favor of the State. *Detroit v. Detroit*, etc., Co., 43 Mich. 141; s. c., 5 N. W. Rep. 275. The section construed. *Atty.-Gen. v. Joy*, 55 Mich. 94; s. c., 20 N. W. Rep. 806; see, also, *Joy v. J. & M. Co.*, 11 Mich. 155, 170.

Services of an engineer in constructing a railroad, not "labor," within meaning of above section. *Brockway v. Innes*, 39 Mich. 47.]

§ 9. The property of no person shall be taken by any corporation for public use without compensation being first made or se-

cured, in such manner as may be prescribed by law.

See art. XV, § 15; art. XVIII, § 14.

[See *Woodbridge v. Detroit*, 8 Mich. 274, 300. Overflowing of another's land held to be a taking. *Booming Co. v. Jarvis*, 30 Mich. 308, 321.]

§ 10. No corporation, except for municipal purposes, or for the construction of railroads, plank-roads and canals, shall be created for a longer time than thirty years; but the legislature may provide by general laws applicable to any corporation, for one or more extensions of the term of such corporation while such term is running, not exceeding thirty years for each extension, on the consent of not less than a two-thirds majority of the capital of the corporation; and by like general laws for the corporate reorganization for a further period, not exceeding thirty years, of such corporation whose terms have expired by limitation, on the consent of not less than four-fifths of the capital; Provided, That in cases of corporations where there is no capital stock, the legislature may provide the manner in which such corporations may be reorganized.

Proceedings for continuing corporate existence. § 4161d2. Winding up of corporation on expiration of term. § 4161d7. Corporation to continue three years for certain purposes. § 4867. How incorporation may be renewed. § 4904a.

[A general law leaving the term of existence of corporation indefinite, and to end on a contingency, is objectionable. *Mok v. B. & S. Assn.*, 30 Mich. 511.]

§ 11. The term "corporation," as used in the preceding sections of this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations, not possessed by individuals or partnerships. All corporations shall have the right to sue, and be subject to be sued in all courts, in like cases as natural persons.

See § 4860, subd. 1, and cross-references. Term "employer" includes corporation. § 6534m7. Word "person" includes corporation. § 2.

§ 12. No corporation shall hold any real estate hereafter acquired, for a longer period than ten years, except such real estate as shall be actually occupied by such corporation in the exercise of its franchises.

See § 4161b3, and cross-references.

§ 15. Private property shall not be taken for public improvements in cities and villages without the consent of the owner, unless the compensation therefor shall first be determined by a jury of freeholders, and

Railroads — Const., Art. xv, § 16; Art. xviii, § 14; Art. xixA, §§ 1, 2.

actually paid or secured in the manner prescribed by law.

See art. XV, § 9, and cross-references.

[This section requires a jury of twelve. *Campau v. Detroit*, 14 Mich. 276; see *People v. Brighton*, 20 id. 57. The jury must determine the necessity for the taking as well as the amount of compensation. *Horton v. Grand Haven*, 24 Mich. 465; *Paul v. Detroit*, 32 id. 108; *Arnold v. Decatur*, 29 id. 77.]

§ 16. Previous notice of any application for an alteration of the charter of any corporation shall be given in such manner as may be prescribed by law.

See art. XV, § 8, and cross-references.

### ARTICLE XVIII.

#### Miscellaneous Provisions.

§ 14. The property of no person shall be taken for public use, without just compensation therefor \* \* \*.

See art. XV, § 9, and cross-references.

### ARTICLE XIX A.

#### Railroads.

Section 1. The legislature may, from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on different railroads in this State, and shall prohibit running contracts between such railroad companies whereby discrimination is made in favor of either of such companies as against other companies owning connecting or intersecting lines of railroad.

§ 2. No railroad corporation shall consolidate its stock, property, or franchises, with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given of at least sixty days to all stockholders, in such manner as shall be provided by law.

See § 4904e. Combinations or trusts prohibited. § 9354j.

STATUTES OF MICHIGAN — 1882.

(Supplemented to 1890.)

**TITLE I. OF THE STATUTES AND THE LEGISLATURE.**

**CHAPTER I.**

**Of the Statutes.**

**Sec. 2. Rules of construction.**

§ 2. In the construction of the statutes of this State, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature, that is to say:

12. The word "person," may extend and be applied to bodies politic and corporate, as well as to individuals:

18. All acts of incorporation shall be deemed public acts, and as such, may be declared on, and given in evidence, without specially pleading the same; \* \* \*

See Const., art. XV, § 11.

**TITLE XVI. ASSOCIATIONS, CORPORATIONS, AND REGULATIONS RELATING THERETO.**

**Pt. III. Incorporation of water supply companies.**

**Ch. 84. Companies for introduction of water into towns, cities and villages.**

**XIII. Mining and manufacturing companies.**

**Ch. 124. Manufacturing companies.  
124A. The winding up of mining and manufacturing corporations.**

**XXIV. Corporations in general.**

**Ch. 181. General provision relating to corporations.**

**Part III. Incorporation of Water Supply Companies.**

**CHAPTER LXXXIV.**

**Companies for Introduction of Water into Towns, Cities and Villages.**

**Sec. 3126. Certain corporations may become stockholders.**

§ 3126. \* \* \* Any railroad, gas, manufacturing, or other corporation organized under any law of this State, and any insurance company organized under the laws of any State or country, doing business in this State, may subscribe for and own stock in such company,\* and be entitled to all the

rights and privileges, and shall be subject to all the liabilities of stockholders. \* \* \*

General powers of corporation. § 4161b2.

**Part XIII. Mining and Manufacturing Companies.**

**CHAPTER CXXIV.**

**Manufacturing Companies.**

**Sec. 4161a. Who may incorporate, and for what; proviso as to name.**

4161a1. Articles of association, requirements of.

4161a2. First meeting of stockholders; waiver of notice.

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4161b2. General powers.

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4161b7. Removal of place of business; certificate of.

4161b8. Return of articles after recording; fee for recording.

4161b9. May establish office outside of State and hold stockholders' meetings; service of process on agent; offices, how located; not to be changed within year.

4161c. Refunding of capital stock prior to payment of debts; liability of stockholders.

4161c1. Dividends, liability of directors for declaring illegal.

4161c2. Directors personally liable, when.

4161c3. Lien of corporation upon stock, how enforced.

4161c4. Same; sale of stock.

4161c5. Issue of certificate to purchasers of stock so sold.

4161c6. When stock is pledged to third party corporation may sell equity of redemption.

4161c7. Liens acquired by attachment or execution not to be affected.

4161c8. Liability of stockholders for labor debts.

\*Water supply company.



## Manufacturing company; articles of association — Stat., §§ 4161a, 4161a1

Sec. 4161c9. Service of process or notice against corporation, how made.

4161. All corporations liable to taxation.

4161d1. Property liable to execution for claims against corporation only.

4161d2. Proceedings for continuing corporate existence of corporation about to expire by limitation of time.

4161d3. When chapter 191 to apply.

4161d4. Organization of de facto corporations legalized.

4161d5. Acts repealed; corporations formed thereunder not dissolved; proviso.

4161d6. How foreign corporations may carry on business.

[An Act to revise the laws providing for the incorporation of all manufacturing companies, except such as are contemplated by act number forty-two, of the session laws of eighteen hundred sixty-seven, which provides for the incorporation of persons or corporations engaged in the manufacture of salt, and mercantile companies, or any union of the two, and to fix the duties and liabilities of such corporations.]

§ 4161a. Any number of persons not less than three, desiring to become incorporated for the purpose of carrying on any manufacturing or mercantile business, or any union of the two, under any name assumed by them, may, by complying with all the provisions of this act, with their successors and assigns, become a body politic and corporate, under any name assumed by them in their articles of association: Provided, No two companies shall assume the same name, nor a name so similar as to be liable to mislead.

Corporation to be formed under general laws. Const., art. XV, § 1. See § 4161d5. Inspection of manufactures provided for. Act of 1893, at p. 71. Trusts and combinations prohibited. § 9354j.

[The business of harvesting and vending natural ice is a manufacturing one, for which corporations may be formed. *Att'y-Gen. v. Lorman*, 59 Mich. 157; s. c., 26 N. W. Rep. 311.

A corporation organized to control the manufacture and sale of matches, its object being to stifle competition, and monopolize the whole business of the company in that line, is an unlawful combination, and contrary to public policy. *Richardson v. Buhl*, 77 Mich. 632; s. c., 43 N. W. Rep. 1102.

A corporation may be known by several names, and parol evidence of identity is admissible. *Walrath v. Campbell*, 28 Mich. 111.

An attempted incorporation of a company under a statute which was declared to be a nullity does not make the organization even a corporation de facto, and its organizers are personally liable as partners for its debts. *Eaton v. Walker*, 76 Mich. 579; s. c., 43 N. W. Rep. 638. This act is constitutional and valid. *Jenking v. Osmun*, 44 N. W. Rep. 787.]

§ 4161a1. (As amended June 20, 1889.) The articles of association of every such corporation shall be made on suitable and uniform blanks, which it is hereby made the duty of the secretary of State to furnish on application, free of charge, which articles shall be signed by the persons associating in the first instance, and acknowledged before some person authorized by the laws of this State to take acknowledgments of deeds, and shall state:

First, The name assumed by which the corporation shall be known in law;

Second, Distinctly and definitely the purpose or purposes for which the corporation is formed, and it shall not be lawful for said corporation to divert its operations, or appropriate its funds to any other purpose, except as hereinafter provided;

Third, The place or places at which its operations are to be conducted;

Fourth, The amount of the capital stock, which shall not be less than five thousand nor more than five million dollars, except in cases of corporations organized for the manufacture of cheese or other products of milk, in which case the capital stock shall not be less than one thousand dollars. Subject to the limitations herein named, the capital stock and number of shares may be increased or diminished at any annual meeting of the stockholders, or at any meeting duly called for that purpose by a vote of two-thirds of the capital stock of the corporation, and at such meeting the stockholders shall have power to make all necessary provisions for calling in and canceling the old and issuing new certificates of stock, but nothing herein contained shall in any way operate to discharge any company which may diminish its capital stock from any obligation or demand that may be due from said company. When any such stock shall not be less than one thousand dollars. Subject to the limitations herein named, the capital stock and number of shares may be increased or diminished at any annual meeting of the stockholders, or at any meeting duly called for that purpose by a vote of two-thirds of the capital stock of the corporation, and at such meeting the stockholders shall have power to make all necessary provisions for calling in and canceling the old and issuing new certificates of stock, but nothing herein contained shall in any way operate to discharge any company which may diminish its capital stock from any obligation or demand that may be due from said company. When any such corporation shall so increase or diminish its capital stock, the president and a majority of the directors shall make a certificate thereof, which shall be signed by them and recorded and returned as is provided herein for recording and returning the articles of association, and such increase or diminution shall commence and be operative from and after the date when the certificate is received for record in the office of the secretary of State;

Fifth, The number of shares into which the capital stock is divided, which shall be of the par value of ten dollars each;

Sixth, The amount of capital stock actually paid in at the date of the articles, which shall not be less than ten per cent., and the amount so paid in shall not be reduced below such per cent. of its capital;

First meeting; directors — Stat., §§ 4161a2, 4161a3.

Seventh, The place in this State where the office of the company is located;

Eighth, The term of years the corporation is to exist, which shall not be to exceed thirty years;

Ninth, The names of the stockholders, their respective residences, and the number of shares subscribed for by each.

Term of corporation limited. Const., art. XV, § 10. Articles of association, to be recorded. § 4161a8. Amendment of articles. § 4161b6. Removal of place of business. § 4161b7. Articles of association of de facto corporation. § 4161d4. Amendment and renewal of charter. §§ 4902-4904b. Writs to vacate acts of incorporation. § 8618. Charter forfeited. § 9354m. Corporation may change name. Act of 1895, at p. 68. As to dissolution, forfeiture of charter, etc., see § 4161d7, and cross-references.

[The company office may be in one county and the mining or manufacturing business in another. *Van Etten v. Eaton*, 19 Mich. 187.

Articles of association of a manufacturing corporation are invalid if not acknowledged, and are not entitled to be filed in office of secretary of State. *Doyle v. Mizner*, 42 Mich. 332; s. c., 3 N. W. Rep. 968.

The articles of association are the sole criterion to ascertain purpose for which a corporation is formed. *Att'y-Gen. v. Lorman*, 59 Mich. 157. The first step necessary to form a corporation is the acknowledgment of the articles. *Carmody v. Powers*, 60 Mich. 26; s. c., 26 N. W. Rep. 801.

A corporation organized in another State, though doing business in Michigan, cannot maintain quo warranto to prevent a corporation organized in Michigan from taking a similar name. *People v. Ins. Co.*, 69 N. W. Rep. 653.]

§ 4161a2. When any number of persons shall have associated according to the provisions of this act, any two of them may call the first meeting of the stockholders, at such time and place as they may appoint, by giving notice thereof by publishing the same in some newspaper published in the county in which its office is located, and if there is no newspaper published in such county, then by publishing the said notice in some newspaper published in an adjoining county, at least two weeks before the time appointed for such meeting. But said notice may be waived by writing signed by all the subscribers to the capital stock of said corporation, specifying the time and place for said first meeting, which writing shall be entered at full length upon the records of the corporation; and the first meeting of any such corporation, which has been held pursuant to such written waiver of notice, shall be valid.

Meeting may be held without State. § 4161b9. Meetings held lawful. § 4164. Notice of first meeting. §§ 4862-4864. Manner of calling and conducting determined by by-laws, § 4861. Business transacted at meetings. § 4865.

§ 4161a3. (As amended May 13, 1893.) The stock, property, affairs, and business of every manufacturing or mercantile corporation

shall be managed by not less than three directors, who shall be chosen annually by the stockholders, at such time and place as shall be provided by the by-laws of said corporation, and who shall be stockholders, and shall hold their offices for one year, and until others shall be chosen in their stead.

See §§ 4161a4-4161a6. Majority of directors a quorum. § 4161a9. Power to elect directors. § 4161b2. Same. § 4860, subd. 3. Tenure of office to be provided by by-laws. § 4861. Vacancies to be filled by whom. § 4865. Election of directors. § 4885a. See § 8150. Directors may be appointed receivers. § 8182.

[The ordinary management of a corporation is under the control of its directors. *Bank v. Barge Co.*, 52 Mich. 438. But individual directors cannot bind it. *Lockwood v. Boom Co.*, 42 Mich. 537; s. c., 4 N. W. Rep. 292.

Statements of individual directors do not prove a completed contract between their corporation and an individual, when. *Peek v. Detroit Works*, 29 Mich. 313.

Managing director may properly have custody of corporate assets. *Walker v. Detroit, etc., Co.*, 47 Mich. 338; s. c., 11 N. W. Rep. 187.

Corporate authorities, and generally the directors, have power to compromise corporate debts, and where there is any doubt about a subscriber's liability they can release a part in order to secure the rest. *Whitaker v. Grummond*, 68 Mich. 249; s. c., 36 N. W. Rep. 62.

Notice of a directors' meeting, sent by mail, must give person notified, in absence of any regulation, a reasonable time to reach the place of meeting. *Covert v. Rogers*, 38 Mich. 363.

A resolution passed by two directors, in absence of a third not sufficiently notified, will not authorize execution of a mortgage whereby the latter's property is taken from him. *Doyle v. Mizner*, 42 Mich. 332; s. c., 3 N. W. Rep. 968.

The general rule is that a majority of directors constitute a quorum for transaction of business, and a majority of the quorum have power to bind corporation by their votes. *Ten Eyck v. Pontiac, etc., Co.*, 74 Mich. 226; s. c., 41 N. W. Rep. 905.

Directors are agents of the corporation to whose charge the entire management of corporate affairs is committed. *Id.* A director occupies a fiduciary relation, and his dealings are viewed with jealousy and distrust by the courts and may be set aside on slight ground. *Washburn v. Green*, 133 U. S. 30; s. c., 10 Sup. Ct. Rep. 280. He is required to act in the utmost good faith, and impliedly undertakes to give to the enterprise the benefit of his best care and judgment, and exercise the powers conferred solely in the interest of the corporation. *Ten Eyck v. Pontiac, etc., Co.*, supra. But he may enter into contract relation with the corporation when the latter is represented in the transaction by a majority of the board. *Id.*

Services rendered by a director are presumptively gratuitous where he acted without any preliminary arrangement. *Eakins v. Bronze Co.*, 75 Mich. 568; s. c., 42 N. W. Rep. 982. But if he performed at company's request services as an attorney in procuring rights of way, and in enlisting capitalists in the enterprise, he is entitled to recover the reasonable value, if the value has not been fixed by resolution. *Ten Eyck v. Pontiac, etc., Co.*, supra.

Contracts fixing salaries and rentals for profit of a director who owned a majority of the stock and controlled the directorate were held absolutely void. *Miner v. Ice Co.*, 93 Mich. 97; s. c., 53 N. W. Rep. 218.

A director to whom shares of stock are voted as a bonus is subject, though there is a contract between him and the company that such stock shall not be assessable, to the liabilities of a stockholder who had not paid for his stock. *Washburn v. Green*, 133 U. S. 30; s. c., 10 Sup. Ct. Rep. 280.



Manufacturing company; directors; articles to be recorded — Stat., §§ 4161a4–4161a8.

Directors who, after expiration of a corporation, conduct its business without attempting to wind it up and collect assessments on stocks, must, in a proceeding to close up its affairs, account for the proceeds of the business done since the dissolution. *Mason v. Mining Co.*, 133 U. S. 50; s. c., 10 Sup. Ct. Rep. 224.

The management of a corporation belongs generally to the directors, but holders of a majority of stock can act where it is necessary to investigate the management. *Star Line v. Van Vleet*, 43 Mich. 364; s. c., 5 N. W. Rep. 418.

Misconduct of directors cannot be said to have been ratified by the corporation, where the only acquiescence has been by such directors themselves or their creatures. *Miner v. Ice Co.*, 93 Mich. 97; s. c., 53 N. W. Rep. 218.

Individual directors have no power to bind the corporation. *Mining Co. v. Mining Co.*, 80 Mich. 491; s. c., 45 N. W. Rep. 351.

A delay by stockholders for ten years after an alleged fraudulent purchase of a portion of the unissued stock of the corporation by one of its directors from a stranger, is fatal to maintenance of a bill to compel a director to pay over to corporation the moneys obtained by him by means of his alleged fraudulent purchase. *Keeney v. Converse*, 99 Mich. 316; s. c., 58 N. W. Rep. 325.

No court, except in proceedings to divest corporate franchises, can so interfere with management of corporate affairs as to allow any but the lawful directors to manage them. *La Grange v. State Treasurer*, 24 Mich. 468.

A mortgage held not invalid as against a director voting in favor thereof, though it inures to the benefit of other directors secondarily liable on the indebtedness. *Lucas v. Friant*, 69 N. W. Rep. 735.

Quo warranto is a proper remedy to test the rights of one claiming to have been elected a director. *Atty.-Gen. v. Looker*, 69 N. W. Rep. 929.

Directors held personally liable for failure to make annual report. *Bank v. Pierson*, 70 N. W. Rep. 901.

Directors may, as against other stockholders, purchase the corporate property at foreclosure sale. *Lucas v. Friant*, 69 N. W. Rep. 735.

§ 4161a4. If an election of directors in any such corporation shall not take place at the annual meeting thereof, in any year, such corporation shall not thereby be dissolved, but an election may be had at any time thereafter to be fixed upon, and notice thereof to be given by the directors: Provided, That in case the directors shall refuse or neglect so to do, any three of the stockholders may call a meeting of the stockholders for the election of directors, by giving the notice as prescribed in section three of this act.

See § 4161a3 and cross-references.

[Failure to elect directors annually does not dissolve the corporation; the old directors continue in office until new ones are elected. *Cahill v. Ins. Co.*, 2 Doug. 124.]

§ 4161a5. The directors of every such corporation shall choose one of their number to be president and one of their number to be vice-president, and shall also choose a secretary and treasurer, which two last-mentioned officers shall reside, and have their place of business, and keep the books of said corporation within this State, and shall choose such other officers as the by-laws of the corporation shall prescribe, all of which said officers shall hold their offices until others shall be chosen in their stead: Provided, That if the stockholders shall so elect, the

same person may hold the office of secretary and treasurer.

Election of officers and agents. § 4860, subd. 3, and 'note. Majority of directors a quorum. § 4161a9. Books of account, where kept. § 4161b4. Liability of directors. § 4161c1-2. Removal of place of business. § 4161b7. May establish office outside of State. § 4161b9. Same. §§ 4162-4163. Books to be kept in office in this State. § 4900. Officer of company must give certificate. § 7699.

§ 4161a6. The directors of such corporation shall have power to fill any vacancy which may happen in their board by death, resignation, or otherwise, for the current year.

Stockholders may fill vacancies, when. § 4865. Circuit court may direct new election to fill vacancy, when. § 8150.

§ 4161a7. It shall be lawful for any corporation organized or existing under the provisions of this act to conduct its business in whole or in part at any place or places within the United States.

Place of business to be stated in articles of association. § 4161a1. Books of account to be kept within State. § 4161b4. Removal of place of business. § 4161b7. Office may be established without State. § 4161b9. How foreign corporation may carry on business in this State. § 4161d6. Offices in other States. §§ 4162-4163. Unlawful to keep an office wherein gambling is conducted. § 9354f.

§ 4161a8. Before any corporation, organized under this act to operate in this State, shall commence business, the president shall cause the articles of association to be recorded, at the expense of said corporation, in the office of the secretary of State of this State, and in the office of the county clerk of the county in which such operations are to be carried on, and before any corporation organized hereunder, to operate outside this State, shall commence business, the president shall cause the articles of association to be recorded at the expense of the corporation, in the office of the secretary of State and in the office of the county clerk of the county in this State where the office of the corporation is located. The secretary of State and the county clerk, in whose office such articles of association shall be recorded, shall each certify upon every such articles of association recorded by him, the time when it was received, with a reference to the book and page where the same is recorded, and the record, or transcript of the record, certified by the secretary of State of this State, and under the seal thereof, shall be received in all the courts of this State as prima facie evidence of the due formation, existence, and capacity of such corporation in any suit or proceedings brought by or against the same. And in case of companies organized under act number forty-one, laws of eighteen



hundred and fifty-three and amendments thereto, and whose original articles of association and amendments are filed in the office of the secretary of State, copies of such articles of association or amendments duly authenticated by the secretary of State under the seal of the State, shall be received in all courts of this State as prima facie evidence of the things therein stated.

Articles of association, requirements of. § 4161a1. Return of articles after recording. § 4161b8. See § 4161d6. Foreign corporation to file articles of incorporation. Act of 1895, at p. 74. See Act of 1891, at p. 65.

[Failure to file certified copy of articles with county clerk cannot be set up by private persons to avoid corporate contracts; the provision was intended merely to facilitate proof of corporate existence. *Johns v. People*, 25 Mich. 499.

Whether failure to file articles with secretary of State is not an objection that can only be made on behalf of the State, *quere*. *Whipple v. Parker*, 29 Mich. 369.

Where statute requires articles to be filed before commencing business, only the State can object if such requirement is disregarded. *Whitney v. Wyman*, 101 U. S. 392.

Mandamus to compel secretary of State to file articles of association of a foreign corporation organized not only to carry on mining business but for other purposes, was denied. *Land Corporation v. Osmun*, 76 Mich. 162; s. c., 43 N. W. Rep. 14.

A contract entered into by a corporation before filing its articles, as required by statute, may be subsequently ratified. *Whitney v. Wyman*, 101 U. S. 392.]

§ 4161a9. A majority of the directors of every manufacturing or mercantile corporation convened according to the by-laws, shall constitute a quorum for the transaction of business; and the stockholders holding a majority of the stock, at any meeting of the stockholders, shall be capable of transacting the business of that meeting, except as herein otherwise provided; and at all meetings of such stockholders each share shall be entitled to one vote. Stockholders may appear and vote in person or by proxy duly filed.

See § 4161a5. By-laws may provide the number that shall constitute a quorum. § 4861.

[The general rule is that a majority of directors constitute a quorum for transaction of business, and a majority of quorum have power to bind the corporation by their votes. *Ten Eyck v. Pontiac, etc., Co.*, 74 Mich. 226; s. c., 41 N. W. Rep. 905.

Where corporate records show that a resolution was adopted by the stockholders, it may be presumed that it was adopted by the holders of a majority of stock. *Star Line v. Van Vliet*, 43 Mich. 364; s. c., 5 N. W. Rep. 418.]

§ 4161b. The directors may call in the subscription to the capital stock of such corporation by installments, in such proportion and at such times and places as they shall think proper, by giving notice thereof, as the by-laws shall prescribe; and in case any stockholder shall neglect or refuse payment of any such installment for the space of thirty

days after the same shall have become due and payable, and after he shall have been notified thereof, said corporation may recover the amount of said installment from such negligent stockholder in any proper action for that purpose, or so much of the stock of such delinquent stockholder as may be necessary to pay such installment so due, may be sold by the directors at public auction at the office of the secretary of the corporation, giving at least thirty days' notice of such sale in some newspaper published in the county where said office is located, if there is a newspaper published in such county; if not, then in some newspaper published in some adjoining county; and in case of a sale of said stock the proceeds thereof shall be first applied in payment of the installment called for and the expenses of the sale, and the residue, if any, shall be refunded to the delinquent stockholder. In case the proceeds of such sale shall be insufficient to pay said installment, said corporation may recover the balance from such negligent stockholder. Such sale shall entitle the purchaser to all the rights of a stockholder to the extent of the shares so purchased.

Lien on stock. § 4161b5. How enforced. § 4161c3. Same. § 4161c4. When stock pledged to third party. § 4161c6. By-laws may prescribe mode of selling shares for non-payment of assessment. § 4861.

[A certificate of stock issued in the usual form, except that it contains a promise to pay interest until the happening of a certain event, constitutes the person to whom it is issued a stockholder. *McLaughlin v. Detroit, etc., Co.*, 8 Mich. 100.

A person once entitled to stock can only be deprived of it by transfer, or by such forfeiture for non-payment of assessments as is authorized by law. *Copland v. Min. Co.*, 33 Mich. 2.

Capital stock can be increased only by the body of corporators specially convened for the purpose. *Finley, etc., Co. v. Kurtz*, 34 Mich. 89.

As to right to rescind stock subscriptions for fraud, and what conduct and laches estop the subscriber, see *Duffield v. W. & I. Works*, 64 Mich. 293; s. c., 31 N. W. Rep. 310.

Where articles provide that notice of regular meetings shall be given by mail, oral notice of a meeting to assess stock is not sufficient as to persons who did not appear at said meeting in response thereto. *Westcott v. Min. Co.*, 23 Mich. 145.

Who are, and who are not, stockholders. *O'Brien v. Fulkerson*, 75 Mich. 554; s. c., 42 N. W. Rep. 979.

A subscriber to a paper by which signers agree to pay certain sums to a corporation thereafter to be formed is liable, in an action on such agreement, for the entire amount he agreed to pay, and not merely for the deficiency which might result from a sale of the stock he agreed to take. *Fair Assn. v. Walker*, 83 Mich. 386; s. c., 47 N. W. Rep. 338; 88 Mich. 62; s. c., 49 N. W. Rep. 1086.

A subscriber to such preliminary agreement is estopped to deny that he is a stockholder or member of such corporation where he has attended meetings and voted as a stockholder. *Id.* And he cannot defend suit on his subscription on ground that the act of incorporation does not provide for any preliminary subscription, or that amount of stock provided for in articles is greater than that in the original agreement, or that the amount provided for by the articles has not all been paid in. *Id.*

A signer of preliminary subscription papers who has not joined in execution of the articles cannot, if all stock has not been subscribed, be held liable except on ground that he has assumed the relation of a stockholder, has been recognized by the corporation as a member, and has waived the condition that the whole capital stock must first be subscribed. *Hotel Co. v. Mullins*, 93 Mich. 318; s. c., 53 N. W. Rep. 360. Such assumption and such waiver cannot be shown by conduct that antedates the preparation and execution of the articles. *Id.*

One who receives a certificate of stock for a certain number of shares, at a given sum per share, thereby becomes liable to pay the amount thereof when called upon by the corporation or its assignee. *Chubb v. Upton*, 95 U. S. 665.

The signing of articles of association and subscribing for stock import a promise to pay the amount of such subscription when called in. *Plank Road Co. v. Millerd*, 3 Mich. 91.

An original subscriber in a mining corporation is liable for balance due upon assessments after applying the proceeds of his stock sold for default. *Carson v. Mining Co.*, 5 Mich. 288. And a stockholder, though not an original subscriber, is liable for any balance due upon assessments, after the stock has been sold for default in payment, and the proceeds of sale applied. *Mining Co. v. Bagley*, 14 Mich. 501.

Assumpsit cannot be maintained in corporate name against an original stockholder for the price of his stock when no assessment therefor has been made, and the required percentage of capital stock has never been paid in, and there is no showing of the assent of directors to any special arrangement under which it is claimed that the liability arises. Nor will it lie for stock calls where none have ever been made. *Engine Co. v. Donovan*, 57 Mich. 318; s. c., 23 N. W. Rep. 828.

As to the force which a judgment against a corporation for a debt contracted would have on trial against the stockholder, query. *Bohn v. Brown*, 35 Mich. 257.

Stockholders of a mining corporation are liable for such assessments upon their stock as may be made to pay bona fide debts and running expenses, which assessment may be enforced by a personal judgment against a stockholder. *Dynamite Co. v. Andrews*, 97 Mich. 466; s. c., 56 N. W. Rep. 858.

Right of one to defend an action on a stock subscription, the committee being composed of other stockholders. *Manf. Co. v. Munger*, 64 N. W. Rep. 3.

Where organizers of a corporation issued stock to themselves, and guaranteed purchaser that it was non-assessable, they are liable to them when required to pay on account of stock not having been paid up, and also for the extra statutory liability. *Oma v. Benedict*, 65 N. W. Rep. 622.

A subscriber to stock held estopped to defend an action for assessments on ground of ignorance that all the stock had not been subscribed or paid for. *Driving Club v. Fitzgerald*, 67 N. W. Rep. 890.

A corporation purchasing the property of another corporation and issuing stock therefor holds it subject to payment of the debts of the other corporation. *Grenell v. Detroit Gas Co.*, 70 N. W. Rep. 413.

The giving of bonus stock with bonds to induce purchase held not to affect the validity of the bonds as against creditors. *Dummer v. Smedley*, 68 N. W. Rep. 260.

The Minority Stockholders Law, as applied to a life insurance company, held constitutional. *Att'y-Gen. v. Looker*, 69 N. W. Rep. 929.

One who has participated in the issue of stock as paid-up stock cannot complain thereof as a fraud on creditors. *Ten Eyck v. Pontiac, O. & P. A. R. Co.*, 72 N. W. Rep. 257.]

§ 4161b1. (As amended May 18, 1895.) Every such corporation carrying on its manufacturing or mercantile business within or without this State, shall annually, in the month of January or February, make

duplicate reports for the fiscal year of such corporation, which shall state the amount of the capital stock of the corporation, and the amount actually paid in, the amount invested in real and in personal estate, the amount of debts of the corporation and the amounts of credits, the name of each stockholder and the number of shares held by him at the date of such reports, and such other information as the secretary of State may require; which duplicate reports shall be made on suitable blanks furnished by the secretary of state on application, signed by a majority of the directors, verified by the oath of the secretary of the corporation, and deposited in the office of the secretary of State; such duplicate reports shall be so deposited within the said month of January or February. The secretary of State shall carefully examine such reports, and if upon such examination, they shall be found to comply with all the requirements of this section, he shall file one of them in his office, and shall forward the other by mail, to the county clerk of the county in which the office in this State, for the transaction of the business of the corporation so reported, is situated, and it shall be the duty of such county clerk, upon receipt of such report, to immediately cause the same to be filed in his office. If any of said directors of any said corporation shall willfully neglect or refuse to make and deposit the report required by this section, within the time hereinbefore specified, they shall each be liable for all the debts of such corporation and subject to a penalty of twenty-five dollars, and in addition thereto the sum of five dollars for each and every secular day after the first day of March in each year during the pendency of such neglect or refusal, which penalty shall be for the use and benefit of the general fund of this State. The secretary of State shall, during the last week in June in each year, report to the attorney-general, in writing, the name and post-office address of each and every corporation which has failed to comply with the provisions of this section, and upon receipt of such report it shall be the duty of the attorney-general to institute proceedings in any court of competent jurisdiction to collect said penalties, and all necessary expenses incurred by the attorney-general in such proceedings shall be audited by the board of State auditors, and paid from the general fund of the State. And in case any corporation organized or existing under the provisions of this act shall be dissolved by process of law, or whose term of existence shall terminate by limitation, whose property and franchises shall be sold at mortgage sale or at private sale, or for any reason the attitude of the corporation toward the State shall be changed from that set forth in the articles of association, except as is provided in sections two and seventeen, it shall be the duty of the last



Powers; books of accounts; stock personal property — Stat., §§ 4161b2-4161b5.

board of directors of such corporation, within thirty days thereafter, to give written notice of such change to the secretary of State and county clerk of the county where the office of such corporation is located, signed by a majority of such directors, which said notice shall be recorded as amendments are required to be recorded; and in case of neglect to give such notice they shall be subject to the same penalties provided in case of neglect to make annual reports, which said penalty shall be collected and applied in the same manner as in case of neglect in making annual reports. It shall be the duty of the secretary of State during the month of December, A. D. 1895, to cause to be mailed to every corporation subject to the provisions of acts number two hundred thirty-two, public acts of eighteen hundred eighty-five, as amended, a printed copy of this act.

[Above section applies only to such directors as willfully neglect or refuse to make report. *Gennert v. Ives*, 102 Mich. 547; s. c., 61 N. W. Rep. 9. A presumption arises that failure to file the report was intentional, and therefore willful. *Id.*]

Persons dealing with manufacturing corporations upon the strength of reports which they are required to file with secretary of State and county clerk, a knowledge of which is acquired through the usual channels, have the right to rely upon the fairness and honesty of the statements therein made. *Silberman v. Munroe*, 104 Mich. 352; s. c., 62 N. W. Rep. 555.

§ 4161b2. All corporations organized or existing under the provisions of this act shall be capable to sue and be sued, plead and be impleaded, answer and be answered unto, appear and prosecute to final judgment in any court or elsewhere, to have a common seal and to alter the same at pleasure; to elect, in such manner as they shall determine all necessary officers; to fix their compensation and define their duties; to ordain and establish by-laws for the government and regulation of their affairs, and to alter and repeal the same; and to employ all such agents, mechanics, and other laborers as they shall think proper.

Certain corporations may own stock. § 3126. Directors to be elected. § 4161a3. General powers of corporation. § 4860, notes and cross-references.

[In the absence of proof of such powers, it cannot be presumed that a Michigan manufacturing company has corporate authority, or that its directors have implied authority, to organize companies in other States, and subject its home stockholders to liability for assessments and losses in such enterprises; and certainly individual directors, not acting in any formal way, have no power to employ agents for any such purpose, or to stipulate expressly or impliedly for their compensation. *Eakins v. Bronze Co.*, 75 Mich. 568; s. c., 42 N. W. Rep. 982.

§ 4161b3. Every such corporation shall, by its corporate name, have power to acquire and hold such lands, tenements, and hereditaments, and such other property of every

kind as shall be necessary for the purpose of said corporation; and such other lands, tenements and hereditaments as shall be taken in payment of, or as security for, debts due to such corporation, and to manage and dispose of the same at pleasure. It may also purchase and hold any grant of lands made by the general government to aid in any work of internal improvement in this State.

Limitation on time for holding real estate. Const., art. XV, § 12. Corporation may hold land. § 4866. See Act of 1891, at p. 64. See note on general powers, § 4860, as to power to mortgage, etc.

[There is no common-law rule whereby property can be transferred by one corporation to another without grant. *Board of Health v. East Saginaw*, 45 Mich. 257; s. c., 7 N. W. Rep. 808.

The statute of mortmain has never been enforced in Michigan. *Bank v. Niles*, 1 Doug. 401. A corporation forbidden to hold land cannot become the grantee and vendor of it. *Id.* And where charter gives power to take lands for certain defined purposes, the corporation cannot take it for any other purpose. *Id.*

Courts must infer, until contrary is proved, that a purchase of lands is for the legitimate use of the corporation. *Regents v. Society*, 12 Mich. 138.

A lease made by a corporation will not be set aside on ground of ultra vires, after a lapse of seven years. *Gas Co. v. Berry*, 113 U. S. 322; s. c., 5 Sup. Ct. Rep. 525.

A sale made by a corporation by quitclaim leaves no liability on the corporation in case the title is less than is supposed, and raises no question of ultra vires. *Cicotte v. Anciaux*, 53 Mich. 227; s. c., 18 N. W. Rep. 793.

When mortgage executed by a corporation may be enforced against it though ultra vires. *Butterworth v. Kritzer Milling Co.*, 72 N. W. Rep. 990.]

§ 4161b4. The books of every such corporation containing their accounts shall be kept, and shall at all reasonable times be open in the city, village, or town where such corporation is located, or at the office of the treasurer of such corporation, within this State, for inspection by any of the stockholders of said corporation, and said stockholders shall have access to the books and statements of said corporation and shall have the right to examine the same in said city, village or town, or at said office; and as often as once in each year a true statement of the accounts of said corporation shall be made and exhibited to the stockholders.

See § 4161a5. What corporation to keep transfer books in this State. § 4900.

§ 4161b5. The stock of every such corporation shall be deemed personal property, and be transferred only on the books of such corporation, in such form and manner as their by-laws shall prescribe, and such corporation shall at all times have a lien upon all the stock or property of its members invested therein, for all debts due from them to such corporation.

Payment of installments. § 4161b. Stock, how transferred. § 4866. Fraudulent transfer of.



Manufacturing company; amendment of articles — Stat., §§ 4161b6-4161b9.

§ 4882. What corporations to keep transfer-book.  
 § 4900. Transfer of stock. § 4901. Issuing fraudulent stock. § 9349.

[Blank Indorsements of certificates of stock are legal. *Walker Transit R. Co.*, 47 Mich. 338; s. c., 11 N. W. Rep. 187.

A bona fide purchaser for value of a certificate of shares, duly indorsed by a party to whom issued, will be protected in his title. Transfer upon company books is not necessary to validity of his title. *Mandlebaum v. Min. Co.*, 4 Mich. 465. Effect of transfer on company books of stolen certificates. *Id.*

Possession of certificates, properly indorsed, is prima facie evidence of their ownership; and a holder thereof for value, without notice of prior equities, obtains a perfect title thereto as against such equities. *Walker v. Detroit, etc., Co.*, 47 Mich. 338; s. c., 11 N. W. Rep. 187. Status of transferees of stock that has been improperly issued. *Snow v. Weber*, 39 Mich. 143.

Provision in articles of association that ownership of a certificate should carry with it an undivided interest in all company property, passes such interest to subsequent purchaser of a certificate. *Butterfield v. Beardsley*, 28 Mich. 412.

Transfer of stock upon corporate books is not essential to validity of purchaser's title. *McLean v. Medicine Co.*, 96 Mich. 479; s. c., 56 N. W. Rep. 68.

Refusal of president to make transfer on company's books does not amount to a conversion, nor, in absence of special damage, entitle the holder to more than nominal damages. *Id.*

§ 4161b6. Every corporation organized or existing under the provisions of this act may at any annual meeting or any meeting duly called for that purpose, by a resolution adopted by a vote of two-thirds in interest of its capital stock, amend its articles of association in any manner not inconsistent with the provisions of this act, but such amendment shall not become operative until a copy of such resolution, signed by the president and secretary of the corporation, shall have been recorded as is provided herein for the recording of original articles of association, when such amendments shall have the same force and effect as though said amendments had been included in the original articles, and the record, or a copy of the record of such resolution, certified as provided in section nine, shall be received in all courts of this State as prima facie evidence of the things therein stated.

See Const., art. XV, § 8. Articles of association. § 4161a1. Notice of application for amendment. §§ 4902-4903. Corporation may change its name. Act of 1895, at p. 68.

[An amendment to articles of association to conform to provisions of a statute which has not yet gone into effect is premature. *Mich., etc., Assn v. Rolfe*, 76 Mich. 146; s. c., 42 N. W. Rep. 1094.]

§ 4161b7. Any corporation organized or existing under the provisions of this act may remove its place of business from any city, village, or town in this State, where it is or may be located, to any other city, village, or town in this State, by a vote of two-thirds of its stockholders in interest. But in case of a removal from one county to another,

the president and secretary of such corporation shall attach to their articles of association, a certificate that such corporation has thus removed, and said articles of association, together with said certificate, shall be left for record immediately on such removal, in the office of the county clerk of the county to which such corporation shall remove, and they shall be recorded by such clerk, at full length in the book kept by him for that purpose. And the president and secretary of such corporation shall immediately upon such removal, cause a certificate thereof to be recorded in the office of the secretary of State, and also in the office of the county clerk of the county from which it removes.

Place of business to be stated in articles of association. § 4161a1. Business may be conducted, where. § 4161a7. May establish office outside of State. § 4161b9. Same. §§ 4162, 4163. Unlawful for corporation to remove factory without restoring gifts. Act of 1895, at p. 69. See § 9354f.

§ 4161b8. The secretary of State and any county clerk, after recording the articles of association and certificates specified by this act to be recorded by them, shall return the same, each with his indorsement of record thereon, to said corporation; and for recording the articles of association and certificates required in this act, the secretary of State and county clerk shall each be entitled to receive at the rate of twenty cents for each folio.

See § 4161a8, and cross-references. Franchise fee provided for. Act of 1891, at p. 65.

§ 4161b9. It shall be lawful for any corporation organized or existing under the provisions of this act to establish an office or offices for the transaction of business without this State and within the United States and to hold any meeting of the stockholders or directors of such company at such office so provided for: Provided, That there shall always be one business office within this State, and that service of any notice or process may be made upon the agent in charge of such office, which shall be binding upon such corporation. The place of holding such offices shall be fixed by a vote of a majority of stockholders at any lawful meeting called for that purpose, and after being fixed shall not be changed within one year, and shall be certified by the directors of such corporation to the secretary of State of this State within two months from the time such office or officers were so located.

See § 4161a2, and cross-references. Business may be conducted, when. § 4161a7. Removal of place of business. § 4161b7. Service of legal notices, etc. § 4161c9.

§ 4161c. If the capital stock of any such corporation shall be withdrawn, and re-

## Dividends; lien on stock — Stat., §§ 4161c1–4161c5.

funded to the stockholders before the payment of all the debts of the corporation for which such stock would have been liable, the stockholders of such corporation shall be jointly and severally liable to any creditor of such corporation, in an action founded on this statute, to the amount of the sum refunded to him or them respectively.

See Const., art. XV, § 7, and cross-references.

§ 4161c1. If the directors of any such corporation shall declare and pay a dividend when the corporation is insolvent, or any dividend, the payment of which would render it insolvent, knowing such corporation to be insolvent, or that the payment of such dividend would render it so, the directors assenting thereto shall be jointly and severally liable in an action founded on this statute, for all debts due from such corporation at the time of paying or declaring such dividend.

See Const., art. XV, § 7, and cross-references.

[An agreement by a corporation to pay annual dividends to preferred stockholders, without reference to its ability to pay them from earnings, is void. *Lockhart v. Van Alstyne*, 31 Mich. 76.]

A dividend means a sum set apart from profits to be divided among stockholders. *Id.*

None but directors have power to declare a dividend, and it will not be compelled in chancery. *Hunter v. Roberts*, 83 Mich. 63; s. c., 47 N. W. Rep. 131.]

§ 4161c2. If any corporation organized or existing under this act shall violate any of its provisions, the directors ordering or assenting to such violation, shall be jointly and severally liable in an action founded on this statute, for all debts contracted after such violation as aforesaid, to the extent of three times the amount paid in on the stock standing in the name of such director in any such corporation.

See Const., art. XV, § 7, and cross-references.

[Failure of a majority of the directors to file reports as required by law will be presumed intentional, and will render each director liable for the debts of the company. *Van Etten v. Eaton*, 19 Mich. 187. As to what are such "debts," see *Lockhart v. Van Alstyne*, 31 Mich. 76.]

Directors held personally liable for debts upon failure to make annual reports, as required by law. *Bank v. Pierson*, 70 N. W. Rep. 901.

Failure to file annual report held to render directors liable for corporate debts contracted pending the default. *M. I. Wilcox Cordage & Supply Co. v. Mosher*, 72 N. W. Rep. 117. And such failure will be presumed to be intentional and willful. *Id.* The directors may be sued jointly, and creditor need not first recover against the corporation. *Id.*

§ 4161c3. Any corporation organized or existing under this act, which has a lien upon the stock of any stockholder therein as provided by the sixteenth section, may give notice to such stockholder that unless he shall pay his indebtedness to said corporation within three months from the time of giving such notice, then such corporation

will proceed to sell and transfer the stock of such stockholder in said corporation, and upon default of payment said corporation may sell the stock of such indebted stockholder as hereinafter provided, and any such corporation may prescribe by its by-laws the manner of giving the notice required by this section.

See § 4161b, and cross-references. Liens acquired by attachment not to be affected. § 4161c7.

[Right to forfeit shares in any joint-stock undertaking must come from the law, and can be exercised only as therein described. Where articles of association govern the right of forfeiture, all conditions precedent made by them must be strictly complied with. *Westcott v. Mining Co.*, 23 Mich. 135.]

§ 4161c4. Such corporation may, at any time within six months after it shall have given the notice required by the preceding section to such indebted stockholder of its intention to sell such stock, and the three months' notice shall have expired, advertise in one or more newspapers published in said county where such corporation is located, and if there is no newspaper published in said county, then in a newspaper published in an adjoining county, giving at least three weeks' notice of the time and place when and where such stock will be sold, and at the time and place of sale shall state the amount due from such stockholder to such corporation, and then proceed to sell for cash at public auction, to the highest bidder therefor, so much of the stock of such indebted stockholder as shall pay in full the indebtedness of such stockholder to such corporation, together with the necessary costs of sale; and if the sale of the entire stock of such indebted stockholder shall not be sufficient to pay in full the claim of said corporation on said stock, such corporation shall credit the amount received for such stock, less the costs of sale, to said indebted stockholder, and may proceed to collect the remainder of their debt by any proper action for that purpose.

See § 4161b. Selling fraudulent stock. § 9350.

§ 4161c5. Whenever the purchasers of said stock shall have complied with the conditions of said sale, the corporation shall issue new certificates of stock to such purchasers, or to their order, and shall cancel upon the books of the corporation the certificates of such indebted stockholders, and the new certificate so issued shall entitle the holders thereof to all the privileges, rights and interests of a stockholder in such corporation.

See § 4161b5, and cross-references. Rights of purchasers. § 4872. Same. § 4885. Purchasers of property and franchises may organize a corporation. § 4904f.



Manufacturing company; liability of stockholder; service — Stat., §§ 4161c6-4161c9.

§ 4161c6. Whenever any stockholder in any such corporation shall have made a transfer or assignment of his stock as security for his indebtedness to a third party, and afterwards shall become a debtor to such corporation, such corporation may sell the equity of redemption of such stock in the same manner as is provided for the sale of stock on which it has a lien, and shall credit the amount received from such sale to such indebted stockholder. Such corporation may require the party holding the transfer or assignment of such stock, to give a statement to the treasurer of such corporation, under oath, of the amount for which said stock was pledged; and if said party shall not give such a statement at or before the time such sale is to take place, he shall forfeit all claim and lien on such stock or any part thereof, and such corporation may sell the same as herein provided.

See § 4161b, and cross-references.

§ 4161c7. Nothing contained in the four preceding sections shall affect any lien or right acquired by any other party by virtue of any attachment or levy of execution upon the stock of any stockholder in any such corporation.

See § 4161c3. No stay of execution. § 6863. Share, when seized on attachment. § 7698.

§ 4161c8. The stockholders of all corporations organized or existing under this act shall be individually liable for all labor performed for such corporations which said liability may be enforced against any stockholder by action founded on this statute, at any time after an execution shall be returned unsatisfied, in whole or in part, against the corporation, or at any time after an adjudication in bankruptcy against said corporation, and the amount due on such execution shall be prima facie evidence of the amount recoverable, with costs against any such stockholder; and if any stockholder shall be compelled by any such action to pay the debts of any creditor, or any part thereof, he shall have the right to call upon all the responsible stockholders to contribute their equal part of the sum so paid by him as aforesaid, and may sue them, jointly or severally, or any number of them, and recover in such action the amount due from the stockholder or stockholders so sued.

See Const., art. XV, § 7, note, and cross-references. See Act of 1893, at p. 66.

[As to liability of stockholders of telephone company for labor debts, see *Ripley v. Evans*, 87 Mich. 217; s. c., 49 N. W. Rep. 504. Of a street railway company. *Volght v. Dregge*, 97 Mich. 322; s. c., 56 N. W. Rep. 557.

Section construed. *Tilden v. Young*, 39 Mich. 58.

A finding that a defendant is not a stockholder within meaning of above section defeats an ac-

tion against him for labor debts. *Powell v. Eldred*, 39 Mich. 552.

An action for a labor debt may be brought against a corporation alone, or against it and its stockholders jointly, but not against the stockholders alone, and a judgment against the company is a bar to a subsequent action against the stockholders for the same debt. *Milroy v. Iron Co.*, 43 Mich. 231; s. c., 5 N. W. Rep. 287. And such action cannot be maintained against stockholders unless joined with the corporation as defendants. *Thompson v. Jewell*, 43 Mich. 249, s. c., 5 N. W. Rep. 274.

Individual stockholders cannot be made joint defendants with their corporation in an action upon a labor debt brought by an assignee thereof (§ 4886), though they may be in an action brought by the original creditor. *Connors v. Iron Co.*, 54 Mich. 168; s. c., 19 N. W. Rep. 938.

In suits for contribution, where plaintiff has been compelled to pay the company's labor debt, he cannot have a joint judgment, but only a separate judgment against each stockholder for his share according to his stock. *Bagley v. Beecher*, 35 Mich. 108.

It is only when a stockholder is compelled to pay such a debt that he can have contribution. A voluntary payment would not entitle him thereto. *Hanson v. Donkersley*, 37 Mich. 184.

A corporation sued jointly with its stockholders for a labor debt in an action brought out of the county where its works and office are situated, may consent to the jurisdiction, and the stockholders cannot object. *Arno v. Circuit Judge*, 42 Mich. 362; s. c., 4 N. W. Rep. 147; *Norberg v. Heineman*, 59 Mich. 210; s. c., 26 N. W. Rep. 481.

A stockholder is not liable under above section for labor performed before he became a stockholder. *Kamp v. Wintermute*, 65 N. W. Rep. 570.

Otherwise, if a stockholder when labor is performed. *Macomber v. Wright*, 65 N. W. Rep. 610.]

§ 4161c9. Service of any notice or legal process against any corporation formed or existing under this act may be made on the president, secretary, or treasurer, or upon the agent in charge of any business office of such corporation within this State, or if neither of such officers or agent can be found, then such service may be made by posting a true copy thereof in some conspicuous place at the business office of the corporation in this State.

Place of business to be stated in articles of association. § 4161a1. Service on agent. § 4161b9. When and to whom subpoenas shall issue. § 4161e4. Notice of sale on execution. § 4869. Summons, how served. § 6862. Process, how served. § 8057. Suits, how commenced. § 8137. Service of process on railroad corporation. § 8147. Mode of serving writ. § 8624. Summons in quo warranto. § 8636.

[Service of process on a manufacturing corporation cannot be made outside the county where its business office is fixed. *Dewey v. Mfg. Co.*, 42 Mich. 390; s. c., 4 N. W. Rep. 179.

Where an incorporation law contains provisions regulating the bringing of actions against corporations organized under it, they must be regarded as exceptions to earlier general provisions on the same subject, if inconsistent. Id.

A return to a summons issued against a corporation, that officer has served it upon defendant in county in which it issued, by giving copy to the president of the corporation, naming him, is sufficient, upon its face, to give jurisdiction. *Wilson v. Wine Co.*, 95 Mich. 117; s. c., 54 N. W. Rep. 643.

Stockholders who have induced officer to make a service upon wrong person are estopped from



questioning its validity in a chancery suit brought against them to enforce collection of the judgment based thereon. *Id.*]

§ 4161d. All corporations formed or existing under this act shall be liable to be assessed for all real and personal estate held by them in this State, at its true value, and shall pay thereon a tax for township, village, city, county, and State purposes, the same as other real and personal estate, and such tax shall be assessed, collected, and paid in the same manner as other taxes on real and personal estate are required to be assessed, collected, and paid: Provided, Nothing herein contained shall authorize the taxing of the capital stock of such (corporation) corporations as such capital stock.

Stock deemed personal property. § 4161b5. Receiver shall pay taxes. § 4161f3. Assessment and collection of taxes provided for. Act of 1893, at p. 67. Attempt to avoid taxation, penalty. § 4882. Returns to State treasurer. § 4883.

§ 4161d1. That all articles of machinery, materials for manufacturing, or manufactured articles belonging to any such corporation, shall be free from seizure by execution or distress, for any debts or claims for rents or services, in whose hands soever they may be, except such execution or claim be against such corporation.

All corporate property may be sold on execution. § 4868. Interest of stockholder may be taken. § 7697. Corporation may sue and be sued. § 4860, subd. 1. Judgments and executions, enforcement of. §§ 7697-7702. No stay of execution. § 6964.

§ 4161d2. It shall be lawful for any corporation organized or existing under the provisions of this act, whose corporate existence is about to terminate by limitation of law, at its annual meeting next preceding, or at a special meeting called for that purpose, to be held within one year immediately preceding the date of such termination, by a vote of two-thirds of its capital stock, to direct the continuance of its corporate existence for such further term, not exceeding thirty years, as may be expressed in a resolution for that purpose. Upon the adoption of such resolution by the stockholders, it shall be the duty of the president and secretary to make, sign, and acknowledge articles of association, as in the case of a new corporation, to which shall be appended a copy of such resolution verified by the oath of the secretary, which articles of association and copy of resolution shall be recorded, certified, and returned as is provided herein in case of a new corporation, and the record, or a transcript of the record, certified by the secretary of State of this State under the seal thereof, shall be prima facie evidence of the things therein contained. Upon the

expiration of the time limited for the existence of such old corporation, a new corporation shall be deemed to be formed by such articles of association, which shall at once succeed to all the property and rights of action of the old corporation, and shall be liable for all of its debts or other obligations, and the officers of the old corporation shall succeed to like offices in the new corporation, and every stockholder in the old corporation shall be, to a like extent, a stockholder in the new corporation.

See Const., art. XV, § 10, and cross-references.

[An amendment to articles of incorporation held to extend period of corporate existence. *People v. Green*, 74 N. W. Rep. 714.]

§ 4161d3. To corporations organized or existing under the provisions of this act, in the absence of any applicable provision herein contained, the provisions of chapter one hundred and ninety-one of Howell's Annotated Statutes of one thousand eight hundred and eighty-two may be applied.

§ 4161d4. All defects in the organization of any de facto manufacturing corporation which has attempted to organize and is now doing business under any of the laws of this State, providing for the organization of manufacturing corporations, are hereby made legal and valid in every respect, and all such manufacturing corporations shall be deemed to be duly and legally organized under and subject to the provisions of this act, and the original articles of association and amendments now on file in the office of the secretary of State or copies of such articles of association or amendments duly authenticated by the secretary of State, under the seal of the State shall be received in all courts and proceedings in this State as prima facie evidence of the valid and regular organization of such corporation.

See § 4161a1. Proof of corporate existence. § 8140. Existence of de facto corporation cannot be attacked collaterally. *Id.*

§ 4161d5. Act number forty-one of the session laws of eighteen hundred and fifty-three, entitled "An act to authorize the formation of corporations for mining, smelting, or manufacturing iron, copper, mineral coal, silver, or other ores or minerals and for other manufacturing purposes," approved February fifth, eighteen hundred and fifty-three, and act number one hundred and eighty-seven of the public acts of eighteen hundred and seventy-five, entitled "An act for the incorporation of manufacturing companies," approved May first, eighteen hundred and seventy-five, and all acts amendatory or supplemental to said acts so far as they relate to corporations authorized by this act are hereby repealed. But the repeal of the foregoing acts shall not dissolve any corporation

formed or existing under them, and all corporations of the nature of the corporations authorized to be organized under this act, now organized and existing under said several acts in this section mentioned, or either of them, shall be deemed and taken to be organizations under this act, and all rights, obligations, and liabilities contracted, acquired, or incurred by any such last-mentioned corporations thereunder, or under the provisions of any law now in force, not inconsistent with the provisions of this act, shall continue of the same force and effect as though such acts or laws had not been repealed; and all such corporations, from and after the taking effect of this act, shall be subject to all the provisions hereof, as fully as though such organizations had been perpetually thereunder, and such organizations may continue to carry on the business specified in their articles of association under the provisions of this act as lawfully as if said acts mentioned in this section were not repealed: Provided, That nothing in this act contained shall be construed as in anywise affecting any other corporations whatever, organized under the several above-named acts, for purposes other than those mentioned in section one\* of this act, but as to all such corporations the said several acts shall remain in full force.

§ 4161d6. (Added by act of June 20, 1889.) Corporations organized under the laws of any State of the Union, or of any foreign country, either wholly or in part for any of the purposes contemplated by this act, upon recording copies of their charter, or articles of incorporation, or memoranda of association, as provided in section nine† of this act, and upon filing in the office of the secretary of State a resolution, as required in general section forty-three hundred and thirty-one‡ of Howell's Annotated Statutes, and appointing an agent for service of process, may, for such purposes, carry on business in this State, and shall enjoy all the rights and privileges, and be subject to all the restrictions and liabilities of corporations existing under this act.

Admission of foreign corporation to do business in this State, provided for. Act of 1895, at p. 74. They may sue and be sued. § 8135.

[Mandamus to compel secretary of State to file articles of association of a foreign corporation organized not only to carry on a mining business but for other purposes, was denied. *Land Corp. v. Osmun*, 76 Mich. 162; s. c., 43 N. W. Rep. 14.

A foreign corporation will not be aided by our courts in enforcing a contract in violation of its charter. *Orr v. Lacey*, 2 Doug. 230. A corporation organized under laws of another State can make no contracts forbidden by the laws of that State. *Supreme Lodge v. Nairn*, 60 Mich. 41; s. c., 26 N. W. Rep. 826. Comity to a foreign corporation cannot extend to the point of

granting it privileges not allowed by its charter; and in applying for privileges it must show that it has power to exercise them. *Match Co. v. Powers*, 51 Mich. 145. A corporation owing its existence to the laws of an individual State has no power not given by the laws of that State. *Thompson v. Waters*, 25 Mich. 214. A foreign corporation is not a citizen of a State creating it except in a qualified sense; and it can do no business in any other State except on such conditions as the latter sees fit to impose. *Ins. Co. v. Davis*, 29 Mich. 238. Foreign corporations organized to do business not open to citizens generally cannot carry on business in Michigan without express or implied permission. *People v. Howard*, 50 Mich. 239; s. c., 16 N. W. Rep. 314. A corporation created by one sovereignty can operate within limits of another only by express permission of the latter, or by permission implied from principles of comity, but such permission does not make it any the less a foreign corporation. *State Treasurer v. Auditor-General*, 46 Mich. 224; s. c., 9 N. W. Rep. 258. The strictly legal existence of a corporation is confined to the State which created it, and it can exercise its powers in another State only by permission, express or implied, of the legislative power thereof; but the mere right to purchase and sell property will be recognized and protected in another State, subject only to the limitation that the exercise of such right shall not be contrary to the laws or settled policy of the latter State, or prejudicial to its interest or those of its citizens. *Thompson v. Waters*, 25 Mich. 214. Unless its Constitution or statutes declare a contrary rule, the courts of any State are bound to recognize the right of foreign corporation to collect debts due to them by receiving a conveyance of land. *Id.* The several separate acts of incorporation in Michigan are too various and dissimilar to throw any light on the question of the State policy regarding the taking or holding of land in this State by a foreign corporation. *Id.* The question whether a company organized under laws of Indiana is competent to take title to lands in Michigan depends upon the laws of Indiana, and upon the laws of Michigan, and the public policy indicated by its legislation. *Id.* Corporations of one State have no right to exercise their franchises in another, except upon the assent of such other State, and upon such terms as may be imposed by its legislature. *Rensenhouse v. Seeley*, 72 Mich. 693; s. c., 40 N. W. Rep. 765; *Bank v. Burch*, 80 Mich. 242; s. c., 45 N. W. Rep. 93; *Iron Co. v. Circuit Judge*, 88 Mich. 464; s. c., 50 N. W. Rep. 389.

A State may impose as a condition upon which a foreign corporation shall be permitted to do business within the State that it shall stipulate that, in any litigation arising out of its transactions in the State, it will accept as sufficient the service of process on its agents or persons specially designated. *St. Clair v. Cox*, 106 U. S. 359; s. c., 1 Sup. Ct. Rep. 354.

The transaction of business by a corporation in the State appearing on a certificate of service by a proper officer on a person who is its agent there, is sufficient prima facie evidence that the agent represented the corporation in its business. But when the record is offered as evidence in another State, it may be shown that the agent stood in no such representative character to the corporation as would justify service upon him. *Id.*

Service on agents of a corporation in another State for matters within the sphere of their agency is, in effect, service on the corporation itself, as much as if such agents resided in the State where the corporation was created. *Id.*

Service of summons against a foreign corporation, on the secretary, is irregular and unauthorized. Our statutes providing for service of process on various named corporation officers do not apply to foreign corporations. Except in cases where special provision has been made otherwise, the remedy as to foreign corporations must be sought as at common law. *Watson v. Circuit Judge*, 24 Mich. 38.

Service of process on an officer of a foreign corporation, casually within the State but not on the business of the corporation, and not authorized by the corporation to receive such service,

\*§ 4161a. Above section repeals §§ 4127 to 4161, relating to manufacturing corporations.

† § 4161a8.

‡ Relates to Insurance companies.



## Preferred stock — Stat., § 4161d7.

is not a good service. *Newell v. Ry. Co.*, 19 Mich. 336.

The general or special agent of a foreign insurance corporation is the proper person to be served with a summons in garnishment against it, and to make answer. *Lorman v. Ins. Co.*, 33 Mich. 65.

An attorney appointed by a foreign corporation to receive service of process in an action upon any liability or indebtedness incurred or contracted by the company cannot be served with notice of garnishment proceedings. *Moore v. Circuit Judge*, 55 Mich. 84; s. c., 20 N. W. Rep. 801.

Foreign corporations are not prohibited from doing business in the State, under the General Corporation Act and above section. *People v. Hawkins*, 64 N. W. Rep. 736.

Where cause of action did not arise in Michigan, the statutes do not provide for service of process on foreign corporations. *Ry. Co. v. Hosmer*, 64 N. W. Rep. 17.

Foreign corporation selling goods in the state through itinerant salesmen, held not required to pay franchise fee. *M. I. Wilcox Cordage & Supply Co. v. Mosher*, 72 N. W. Rep. 117.

A foreign corporation authorized to do business prior to 1893 held not liable for franchise fee on increase of stock before passage of L. 1893, Act 79. *Warren, etc., Co. v. Secretary of State*, 73 N. W. Rep. 107.]

The following section is added by act of June 1, 1893:

§ 4161d7. Any such company shall have power to create and issue certificates for two kinds of stock, viz.: General or common stock, and preferred stock, which preferred stock shall at no time exceed two-thirds of the actual capital paid in, and shall be subject to redemption at par at a certain time to be fixed by the by-laws of said corporation, and to be expressed in the certificates therefor. And the holder of such preferred stock shall be entitled to a fixed dividend, payable quarterly, half-yearly or yearly, which said dividend shall be cumulative, payable at the time expressed in said certificate, not to exceed eight per cent. per annum, before any dividend shall be set apart or paid on the common stock. In no event shall the holder of such preferred stock be individually or personally liable for the debts or other liabilities of said corporation, excepting debts for labor. Said corporation shall be controlled by a board of directors elected by the preferred and common stockholders, excepting when otherwise provided in the articles of association or amendments thereto: Provided always, If at any time upon a fair valuation of the assets of the corporation the common stock shall be impaired in an amount equal to ten per cent. thereof or any dividend due on the preferred stock shall remain unpaid for sixty days then holders of the preferred stock shall have an equal right with the common stock share and share alike to participate in the election of directors and control of said corporation. If for any reason said corporation shall cease business or become insolvent then after the payment of all liabilities and debts the remainder of the assets of said corporation shall be applied first in payment in full of all preferred stock

and then unpaid dividends due thereon, and the balance divided pro rata, share and share alike among the holders of the common stock. Every corporation organized or existing under the provisions of this act may by a vote of three-fourths in interest of its capital stock amend its articles of association providing for the issue of preferred and common stock, in accordance with this section, in the same manner and with the same effect as is now provided by section seventeen of this act, relating to amending articles of association.

See § 4161a3, and cross-references. Amendment of articles of association. § 4161b6. Dividends, when illegal. § 4161c1. Issue of certificates. § 4161c5.

## CHAPTER CXXIV A.

## The Winding up of Mining and Manufacturing Corporations.

- Sec. 4161d7. Mining and manufacturing corporations may be wound up; proviso.  
 4161d8. Bill in chancery; who may file; requisites of.  
 4161d9. Affidavit, what to state.  
 4161e. Who to be defendants.  
 4161e1. Who may institute proceedings.  
 4161e2. Order of court relative to parties interested, etc.  
 4161e3. Publication of order to be deemed sufficient notice.  
 4161e4. When and to whom subpoenas shall issue.  
 4161e5. Court may appoint receiver; duties of.  
 4161e6. Powers of receiver.  
 4161e7. Receiver shall report to the court; distribution of money.  
 4161e8. Compensation of receiver.  
 4161e9. Final report and discharge.  
 4161f. No sale of property by receiver shall be questioned after one year from confirmation.  
 4161f1. Stockholder may purchase the corporate property; proviso.  
 4161f2. Failure of complainant not to abate proceedings as to other stockholders or creditors.  
 4161f3. Receiver shall pay taxes; order in which creditors paid.  
 4161f4. Order of court to those who have not presented their claim.  
 4161f5. Court may make all necessary orders and regulations.  
 4161f6. Appeal to supreme court.  
 4161f7. What part of records to be transmitted on appeal.  
 4161f8. Proceedings under prior act to be continued.  
 4162. Offices of corporations may be established in other States; how place of holding offices fixed.  
 4163. Offices now established to remain; proviso.  
 4164. Meetings heretofore held, lawful; proviso.

§ 4161d7. (As amended March 26, 1895.) Any corporation heretofore, or hereafter to be organized under the laws of this State for the purpose of carrying on the business of mining, smelting or manufacturing under general acts of the legislature authorizing such organization, whose term of existence as fixed by its articles of association or organization and whose further term for winding up its business allowed by the laws



of this State has expired or shall expire (no other valid proceedings having been completed to wind up its corporate affairs) may be wound up and its assets disposed of and distributed pursuant to the provisions of this act: Provided, That nothing in this act contained shall be construed to prevent the reorganization, or the extension or the renewal of the corporate term, on the part of corporations authorized by law so to act, nor to affect, or impair the organization, rights or property of any de facto corporation actively carrying on its proper business.

See Const., art. XV, § 10. Surrender of corporate rights. § 8155. Who may apply for dissolution. § 8174. When corporation to be dissolved. § 8181. Writ to vacate acts of incorporation. § 8618. Judgment in quo warranto. § 8657. Forfeiture of charter for violation. § 9354m.

[Holders of majority of stock of a dissolved corporation cannot place a value upon it at which a dissenting minority must sell or do something else which they think against their interest. *Mason v. Mining Co.*, 133 U. S. 50; s. c., 10 Sup. Ct. Rep. 224.]

§ 4161d8. (As amended March 26, 1895.) Any stockholder (whether his title to the stock be legal, equitable, absolute or in trust) in such corporation, or any creditor of such corporation whose demand is in full force, and is not barred by any statute of limitations, may file a bill in the circuit court in chancery of any county of this State in which any of the real or personal property of such corporation may be situated, for the purpose of winding up the affairs of such corporation, and disposing of and distributing its property among the persons entitled thereto, which bill shall set forth in substance:

First, The nature of complainant's interest in the property, the date of organization of the corporation, its term of corporate existence, and a copy of its articles of association if the same be on file or of record in the office of the secretary of State or county clerk;

Second, A statement of the assets, real and personal, belonging either in law or equity to such corporation so far as is known to complainant;

Third, A statement of the amount of capital stock, and of the amount thereof paid in if known, together with the names of stockholders, their residence and the number of shares owned by them as shown in the last report of the officers of the corporation on file in the office of the secretary of State or county clerk, if any such report has been filed and can be found therein, and if there be no such report on file, then the foregoing facts shall be set forth as, and in so far as they may appear by the articles of association or organization on file in the office of the secretary of State, or county clerk if any such there be: Provided, That if the

stock books of the corporation are accessible to complainant, he shall also state the names of the stockholders, their place of residence and the number of shares held by each in so far as in such books they appear:

Fourth, A statement of all incumbrances upon any of the property of the corporation, together with all adverse claims upon the same, with the names and residences of the persons holding or asserting the same, so far as known to complainant;

Fifth, A statement of the debts of the corporation, if any, the names and residence of all its creditors, the nature of their demands and the consideration of any such indebtedness so far as known to complainant;

Sixth, If the creditors or owners of the stock of such corporation are, or any of them are unknown to complainant, the bill shall set forth that fact; and the bill shall aver that it is filed, not only on behalf of complainant but also of all other persons interested in the property of the corporation whether as stockholders, creditors or otherwise, who may choose to come in as parties complainant and share the expense of the proceeding;

Seventh, Such bill shall pray that the affairs of the corporation be wound up and its assets disposed of and distributed, and may pray for the appointment of a receiver of its property, and may contain any other appropriate averments of fact, and pray for any other appropriate relief.

Who may institute proceedings. § 4161e1. Failure of claimant not to abate proceedings. § 4161f2. Stockholder may apply for injunction. § 8157. Who may apply for dissolution. § 8174. Application to contain what. § 8175.

[Where a director owning a majority of the stock and influencing a majority of the board had for seven years so controlled the corporation in his own interest that no dividends were paid, a receiver was appointed, accounting ordered and corporation directed to be wound up at suit of a single stockholder. *Miner v. Ice Co.*, 93 Mich. 97; s. c., 53 N. W. Rep. 218.

Stockholders of an expiring corporation are entitled, in absence of agreement to contrary, to have the property converted into money, and its value ascertained by a sale, even though a sale is not necessary to payment of debts. *Mason v. Mining Co.*, 133 U. S. 50; s. c., 10 Sup. Ct. Rep. 224. And a majority of stockholders seeking to reorganize cannot arbitrarily estimate the corporation's property to be transferred to the new company, and require minority to go into such new company, or receive, for their interest in such property, the sum fixed by the majority. *Id.*]

§ 4161d9. (As amended March 26, 1895.) Such bill shall be verified by the complainant, or by some one in his behalf substantially in the manner required by rule number eight of the chancery rules.

Affidavit on dissolution. § 8176. See Act of 1895, at p. 71.

§ 4161e. (As amended March 26, 1895.) Such corporation shall be made a party defendant by its corporate name; all persons

## Dissolution of mining and manufacturing companies — Stat., §§ 4161e1-4161e5.

claiming any incumbrances upon the property thereof, may be parties defendant. It shall not be necessary to make any stockholder or owner of the stock or any part thereof, or creditor of such corporation, a party defendant.

§ 4161e1. (As amended March 26, 1895.) The possession of a certificate of stock purporting to represent a part of the stock of such corporation, running to the holder or assigned to him, or assigned in blank, shall, prima facie, be proof of ownership thereof, and entitle such holders to prosecute such proceedings, or to defend (as hereinafter provided) the same or to receive dividends.

Corporation to issue certificates of stock, when.  
§ 4161c5. See § 4161d8, and cross-references.

§ 4161e2. (As amended March 26, 1895.) Upon the filing of such bill a subpoena shall issue to all persons who are made defendants by name in said bill in the same manner as in ordinary chancery cases, and the court, or judge thereof, may make an order for the appearance and answer of such corporation, its stockholders and creditors, at a future day therein to be specified, not less than three months from the date of the order. Such order shall, among other things, set forth the general nature and object of the proceeding, describe the property to be affected by it, with a particular description of all the real estate, and shall give notice that the bill of complaint will be taken as confessed against said corporation and against all its creditors and stockholders who shall not within the time therein limited, appear and contest the same.

See §§ 4161f4-4161f5.

§ 4161e3. (As amended March 26, 1895.) Such order shall be published within twenty days after it shall have been made, once in each week for six weeks in succession in some newspaper printed and published in every county wherein the bill of complaint avers the corporation owns land, which newspapers shall be specified in the order. If no newspaper be printed in a county where any land described in the bill is situated, then publication shall be made in some newspaper to be specified in the order, printed in a county adjoining thereto: Thereupon, on filing the proof of such publication, and after the expiration of the time designated in such order for the appearance of the corporation defendant, if there shall have been no appearance of such corporation, nor of any person or persons, hereinafter mentioned, entitled to appear and contest the proceeding in its behalf and actually contesting the same, an order may be entered taking the bill as confessed against such corporation defendant, its stockholders and creditors,

either as to said corporation and as to all of such persons, or as to all of such persons who have not appeared and made contest therein, as the case may be. Within the time fixed by such order for appearance any person or persons who were stockholders of such corporation while it subsisted, and who still retain their rights in its property by virtue of having owned stock therein, and any assignee, purchaser, heir, devisee, administrator or executor of such former owner and any creditor or creditors of such corporation whose claim is subsisting and is not barred by limitation of time, may appear and defend such suit as fully as such corporation might do. All persons so appearing and defending shall plead in the name of the corporation. If there be any other party defendant made by the bill besides such corporation defendant, such other party defendant shall be summoned to answer in the usual manner if process can be served, and if not, brought in by publication in the usual manner.

Notice of amendment, where published. §§ 4902-4903. Notice of dissolution. § 8178. Publication of rules. § 8652. Same as to act prohibiting trustees. § 9354.

§ 4161e4. (As amended March 26, 1895.) The publication of such order for the appearance of such corporation defendant shall be full and complete notice to, and service upon such corporation, and all persons, natural and artificial, interested in its property because of having been stockholders in such corporation while subsisting, or of having in any manner acquired the rights of such stockholders, or because of being creditors thereof, for all the purposes of this proceeding, and to enable the court to order and complete the sale of all its property, and to distribute according to law the avails thereof.

Service of any notice, how made. § 4161e9.

§ 4161e5. (As amended March 26, 1895.) The court or the judge thereof, may at any time, on proper application of complainant, and notice to the proper parties, to be given personally or by publication in such manner as the court or judge thereof may order, appoint a receiver of any or all of the property in question, and then, or thereafter on like application, direct such receiver to give notice of his appointment, and to therein require that

First, All persons indebted to such corporation shall render on a certain day and place therein fixed an account to such receiver of all debts and sums of money owing by them to said corporation and pay the same to him;

Second, All persons having in their possession any property or effects of such corporation shall deliver the same to the receiver at the same time and place;



## Dissolution of mining and manufacturing companies — Stat., §§ 4161e6-4161e9.

Third, All creditors of such corporation shall deliver a statement of their claims and demands, and of the nature thereof, to the receiver at the same time and place, which statement shall be verified by the oath of the creditor, or his agent or attorney.

The day fixed in such notice shall not be less than sixty days from the date thereof, and the place a convenient one in the county where the proceeding is pending. Such notice shall be published within one week after it is made, once in each week for six weeks in succession in some newspaper printed and published in the county where the proceeding is pending, if one be printed and published therein, and if not, in some newspaper printed in a county adjoining thereto. All personal claims, demands and causes of action against said corporation shall, unless presented to the receiver within the time in said notice limited, or to the court, before a division of the assets among the creditors is ordered, be forever barred. Such receiver shall be required to give security for the faithful performance of his duties hereunder, by bond running to the register of the court, with such sufficient surety or sureties and in such amount as shall be required and approved by the circuit judge, and any moneys recovered by suit thereon for breach of condition shall be treated as part of the assets of such corporation and be distributed accordingly.

Appointment of receiver in chancery. § 8153. Same. § 8158. Directors may be receivers. § 8182. Court to appoint receiver on judgment in quo warranto. § 8659.

§ 4161e6. (As amended March 26, 1895.) Such receiver shall be vested with all the estate, real and personal, and all the things in action which were vested in such corporation at the time of the expiration of its term of existence as fixed by its articles of association and the laws of this State in that behalf, and which have not since been in any wise divested; may bring suits and actions for the same, and shall hold and dispose of the same for the benefit of those interested therein as creditors and stockholders, under the orders of the court. He may sell the real and personal property at such time and in such manner as the court may direct, provided that the real estate shall be sold only at public auction, on such notice as is prescribed at the time of such sale by law for the sale of real estate on foreclosing a mortgage in chancery. He shall report to the court any sale of real or personal property made by him, and if the court shall be satisfied that such sale is for the best interests of those concerned therein, an order shall be entered confirming such sale and directing a conveyance thereof, by the receiver as such, to the purchaser or purchasers, and such conveyance, when made and confirmed, shall transfer all the rights,

title, claim and interest whether legal or equitable, which such corporation had, immediately before the expiration of its corporate term or thereafter, and shall vest in such purchaser, his heirs and assigns, the same right and title as could have been conveyed by such corporation while its corporate term was current and such purchaser shall hold the same free and clear of all claims thereon by such corporation, its creditors and stockholders, except as herein otherwise provided.

Sale of property by receiver not to be questioned. § 4161f. Receiver to pay taxes. § 4161f3. Powers and obligations of. § 8159. Rights, authority and duties of receivers. §§ 8183-8210.

§ 4161e7. (As amended March 26, 1895.) Such receiver shall report to the court, from time to time, as directed upon the condition of the estate, the amount of money in his hands, and the claims or debts against the corporation proved or filed; and the money in his hands shall be paid into court by him and distributed (after payment of the proper expenses in the proceeding) first among the creditors (if any) and then, as to the residue, among the stockholders, as the court shall direct.

Final report of receiver. § 4161e9. Account by receivers, settlement of, etc. §§ 8202-8206.

[Stockholders are not entitled, upon dissolution, to any corporate property until debts are paid; and they are estopped from denying their liability therefor to the extent of their interest. *Brewer v. Salt Assn.*, 58 Mich. 351; s. c. 25 N. W. Rep. 374.]

§ 4161e8. (As amended March 26, 1895.) compensation for the discharge of his duties. Such receiver shall receive such reasonable as the court may deem proper, and such charges, and all proper disbursements by him made in the discharge of his duties and allowed by the court shall be first paid out of such moneys, and the court may allow a reasonable sum to the complainant as a solicitor's fee in the proceedings, together with all proper disbursements made by him therein, which sum, when allowed by the court, shall be paid by such receiver out of any moneys in his hands before any distribution is made to creditors or stockholders.

§ 4161e9. (As amended March 26, 1895.) After such receiver shall have disposed of all the estate of such corporation, he shall make his final report, which shall state what disposition has been made of such estate, and the moneys received therefor, and the disbursements made by him, and on the filing of such report the court may make an order for the distribution of any surplus remaining in his hands, and such receiver may, on compliance with such order, be discharged of his trust.

See § 4161e7.



## Dissolution of mining and manufacturing companies — Stat., §§ 4161f-4161f5.

§ 4161f. (As amended March 26, 1895.) No sale or disposition of any such real or personal property, conveyed by such receiver and confirmed by the court pursuant to the provisions of this act, shall be questioned by any one, in any suit or proceeding in law or equity, in any court of this State, after the expiration of one year from the date of such confirmation, and nothing herein contained shall be construed or held to receive any debt or claim against such corporation which is or shall be barred by any statute of limitations.

See § 4161e6, and cross-references.

§ 4161f1. (As amended March 26, 1895.) Any stockholder of such corporation may become the purchaser of the property thereof, and may be credited upon the purchase price with such proportion thereof as his stock bears to the entire capital stock of such corporation: Provided, That in such case, such purchaser shall not be exonerated from contribution for the payment of debts and expenses, but shall thereafter pay into the court such proportional amount for that purpose as the court may order and for such amount the property purchased shall also be holden.

§ 4161f2. (As amended March 26, 1895.) In case the claim of the complainant to be a stockholder or creditor, of such corporation shall fail or be disproved, the proceeding may go on at the desire and for the benefit of any other stockholder or stockholders, creditor or creditors, who may have appeared in such proceeding, and whose right to continue the same shall be made to appear; and duly certified copies of the final decree to be made in the proceeding may be recorded in the office of the register of deeds of the counties wherein the lands are situate, and such record or certified copies thereof shall be prima facie proof of such decree and sale, and of the regularity and validity of all steps taken to obtain the same.

See § 4161d8, and cross-references.

§ 4161f3. (As amended March 26, 1895.) All taxes levied upon the corporation or its property shall be paid out of its assets by the receiver, and the creditors of the corporation whose claims have been presented and allowed under the provisions of this act shall be paid in the following order:

First, All persons who shall have furnished or performed any labor for the corporation, and all bona fide holders of any draft or order for the payment of money due for any such labor, issued or drawn by an officer, clerk or agent of such corporation, shall be paid in full if there be funds sufficient, after the payment of taxes and the expenses of the proceeding, and if not, then pro rata;

Second, All other creditors holding personal claims or demands against the corporation

shall be paid in full, if there be a sufficient surplus after the payments mentioned in the preceding subdivision, and if not, then pro rata.

See § 4161d, and cross-references. Powers of receivers. § 4161e6, and cross-references.

§ 4161f4. (As amended March 26, 1895.) After the property of the corporation shall have been sold, and the report of the receiver showing the claims filed with him under section nine of this act, made, and after such claims shall have been passed upon by the court, the court, or the judge thereof, may make an order in the cause, which order shall recite, among other things, the amount of the claims reported and allowed against the corporation and shall summon all personal creditors of the corporation, if any, whose claims have not been presented, to present and file their claims with the register of the court on or before a day certain therein to be stated not less than eight weeks from date thereof, or the same will be forever barred. Such order shall be published within one week from its date, once in each week for four successive weeks, in some newspaper specified in the order printed and published in every county wherein the order for appearance of the corporation mentioned in section seven of this act was published, or in an adjoining county in the case in said section seven provided; and on filing in the cause due proof of such publication, and after the expiration of the time limited therein for presenting and filing claims with the register, all such claims not presented and filed shall be forever barred as against such corporation and its assets.

Order of court. § 4161e2. Meeting of creditors called. § 8190. Debts not exhibited. § 8198.

§ 4161f5. (As amended March 26, 1895.) The court in which proceedings are brought, or in proper cases the judge thereof, may make such orders for the manner of hearing, proving and contesting claims against such corporation, and of hearing, proving and contesting the rights of persons claiming to be stockholders thereof, not inconsistent with the provisions of this act as shall be just and proper, and may make all such orders and decrees touching any proceedings hereunder proper to secure the rights of persons interested, not inconsistent herewith. The court may also make such orders and regulations as may be convenient and necessary, after payment of expenses and of claims against the corporation and touching the division of the same among stockholders of the corporation who may thereafter and from time to time appear claiming to share therein.

See § 4161e2.

§ 4161f6. (As amended March 26, 1895.) Any corporation, person or persons claiming to be aggrieved by any decree or final order of any circuit court in chancery in any proceeding mentioned in this act, may appeal therefrom to the supreme court. Such appeal shall be claimed by a written claim delivered or transmitted within twenty days from the entry of such decree or final order to the register in chancery of the court where such decree or final order was entered, which said register shall make entry of, and the appellant shall, within the same twenty days file with said register, and with sufficient sureties approved by the circuit judge, or said court, or a circuit commissioner of the county wherein said decree was entered, and with such penalty as such judge or commissioner shall approve, conditioned for the diligent prosecution of such appeal, and for the performance or satisfaction of any decree or final order of the supreme court against the appellant in the cause, and for the payment of all costs that may be awarded against the appellant in said supreme court in the matter of said appeal; that upon the filing of said bond with approval as aforesaid, the appeal shall be deemed perfected, and the register in chancery shall, on payment of five dollars to him on behalf of the appellant, make return to the supreme court, and the supreme court shall have power to hear and determine such appeal and all matters concerning the same, and shall have power to reverse, affirm or alter the order or decree appealed from and to make such other order or decree therein as shall be just, in like manner and with like effect as on appeals in suits in chancery according to the existing statutes of the State of Michigan and the rules of the supreme court in such case made and provided. The supreme court, while any appeal shall be pending therein, may, on special motion, give such directions as to said court shall seem proper concerning any stay of proceedings; the supreme court, or the circuit judge of the court where such decree or final order was made, shall, on special motion and proper showing, have power after such appeal is perfected to order an additional bond and fix the penalty thereof, and approve the sureties thereto, or to refer such approval to a circuit court commissioner of said county aforesaid, or the circuit court may, concerning any bond aforesaid, order a suit to be brought and prosecuted for the benefit of any person, persons or corporation as such court may direct, and thereupon such suit may be brought and prosecuted to effect, and all moneys collected in such suit shall be disposed of as such court shall direct.

See § 8211a.

§ 4161f7. (As amended March 26, 1895.) In making return to any appeal, it shall

be necessary to transmit to the supreme court only such part of the files, records and proceedings as may be necessary to enable the supreme court to pass upon the order or decree appealed from, but the supreme court shall have power to order such further return to be made to the appeal as it may deem necessary.

§ 4161f8. (As amended March 26, 1895.) All proceedings begun under said acts numbered two hundred sixty-two and one hundred thirty-seven, up to the time this act takes effect, may continue and be prosecuted to a conclusion thereunder, and in such case shall be and remain as valid and effectual as if this act had not been passed, or, at the pleasure of the complainant, or complainants therein, may be continued and prosecuted under this act: Provided, That any party to proceedings begun under said acts two hundred sixty-two and one hundred thirty-seven shall have the right of appeal secured by this act.

§ 4162. It shall be lawful for any manufacturing company heretofore incorporated or organized under any law or laws of this State, or which may hereafter be incorporated or organized under the same, to establish an office or offices for the transaction of business without this State, and within the United States, and to hold any meeting of the stockholders or directors of such company at such office so provided for: Provided, That there shall always be one business office within this State, and that service of any notice or process may be made upon the agent in charge of such office, which shall be binding upon such company. The place of holding such offices shall be fixed by a vote of a majority of stockholders at any lawful meeting called for that purpose, and after being fixed shall not be changed within one year, and shall be certified by the directors or trustees of such company or association within two months from the time such office or offices were so located.

Business may be conducted, where. § 4161a7. Removal of office, etc. § 4161b7, and cross-references.

§ 4163. In all cases wherein any such company or the directors thereof may have established any such office or offices without this State, and within the United States, before the passage of this act, the same shall be and remain the office or offices of such company, until changed by such company or the directors thereof: Provided, Notice be given of the location of said office or offices to the secretary of State as provided for in section one of this act.\*

§ 4164. All meetings heretofore held or corporate acts done without the limits of this State by any such company, shall be



## General powers — Stat., § 4860.

held and are hereby declared to be as lawful and binding as though held or done in this State: Provided always, That such meetings and acts would have been valid if had within this State.

See § 4161a2, and cross-references.

## Part XXIV. Corporations in General.

## CHAPTER CXCI.

## General Provisions Relating to Corporations.

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Sec. 4900. What corporations to keep transfer books and list of stockholders at office in this State; penalty for failure.

4901. Transfer of stock.  
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 4904b. When renewed corporation shall begin; powers and liabilities.  
 4904c. Corporations may sell all property and franchises.  
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§ 4860. All corporations shall, when no other provision is specially made, be capable, in their corporate name, 1. To sue and be sued, appear, prosecute and defend all actions and causes to final judgment and execution, in any courts or elsewhere;

See Const., art. XV, § 11. General powers of corporation. § 4161b2. Service of process. § 4161c9. Execution. § 4161d1, and cross-references. Proceedings in chancery for winding up corporation. § 4161d7 et seq. Damages for injury to property. § 4876. Order of court for names on company books. § 4888. Court of arbitration. § 653418 et seq. Courts held by justices of the peace. §§ 6861-7087. Evidence. §§ 7513-7545. Proceedings by attachment. §§ 8025a-8025d. Proceedings against garnishees. §§ 8055-8057. Same. §§ 8086-8088. Proceedings in courts of law. §§ 8135-8147. Same in chancery. §§ 8148-8173. Proceedings for voluntary dissolution of corporation. §§ 8174-8211a. Writs of scire facias. §§ 8618-8634. Proceeding in quo warranto. §§ 8635-8662. Action of ejectment against corporation provided for. Act of 1891, at p. 64. Proceedings in nature of discovery. Act of 1895, at p. 70.

[A corporation may be liable in tort, even though malicious intent has to be proved. *Wachsmuth v. Bank*, 96 Mich. 426; s. c., 56 N. W. Rep. 9.

Agent's motive in commission of a tort may be imputable to the corporation. *Id.*

And it is subject to prosecution for creating and maintaining a nuisance. *People v. Lead Works*, 82 Mich. 471; s. c., 46 N. W. Rep. 735. But it cannot be held liable for the malice of one of its stockholders toward a person, unless it be shown that such stockholder inspired or counseled the corporate act complained of. *Randall v. News Assn.*, 97 Mich. 136; s. c., 56 N. W. Rep. 361.

Evidence of reputed wealth of a defendant corporation in a suit for libel is inadmissible. *Id.*

Representations of a promoter of a corporation to be organized may constitute a basis of action, if fraudulent and made with intent to deceive. *French v. Ryan*, 104 Mich. 625; s. c., 62 N. W. Rep. 1016.

A corporate wrong must be remedied in the corporate name, if directors will consent to demand it; a stockholder cannot bring suit in his own name without at least showing that the corporate authorities have refused to act on proper application. *Talbot v. Scripps*, 31 Mich. 268.

A conspiracy with part of the directors to destroy the business and franchises of the corporation for benefit of a rival is a corporate wrong for which the proper remedy is by suit in corporate name. *Id.* Neither stockholders nor creditors can sue for the collection of property or claims on behalf of the corporation but only the corporation itself. *La Grange v. State Treasurer*, 24 Mich. 468.

Only fraud and misconduct by directors can create any equity to allow any other person in-



terested to prosecute. *Id.* The sole creditor of a corporation, after obtaining judgment, may maintain a suit against stockholders having corporate assets in their possession, and may, as against the corporation, seek a discovery of names of stockholders. *Brewer v. Salt Assn.*, 58 Mich. 351; s. c., 25 N. W. Rep. 374.

A single stockholder can sue the corporation to protect his individual rights, but to sue for protection of rights of the corporation against third persons, he must show a clear breach of duty on part of directors. *Detroit v. Dean*, 106 U. S. 537; s. c., 1 Sup. Ct. Rep. 560.

The general rule is that stockholder's suit must be brought in a court of equity, but there are exceptions to this rule. *Hanley v. Balch*, 94 Mich. 315; s. c., 53 N. W. Rep. 953.

The question of power of chancery court to grant an injunction at suit of an individual injuriously affected by the ultra vires acts of a corporation is settled in the affirmative by previous adjudications of this court. *Alpena v. Circuit Judge*, 97 Mich. 550; s. c., 56 N. W. Rep. 941.

A declaration charging, in effect, that defendants have procured control of a corporation by deception and fraud, for purpose of wrecking it, is a declaration in case for fraud. *Smith v. Thompson*, 94 Mich. 381; s. c., 54 N. W. Rep. 168.

As to the rules governing the joinder of stockholders, see *Pettibone v. McGraw*, 6 Mich. 441; *Titus v. Mining Co.*, 8 id. 183; *Westcott v. Mining Co.*, 23 id. 145; *Bengley v. Wheeler*, 45 id. 493; s. c., 8 N. W. Rep. 75; *Brewer v. Salt Assn.*, 58 Mich. 351; s. c., 25 N. W. Rep. 374.

An insolvent stockholder is not necessary to a bill filed to enforce a judgment against the corporation. *Wilson v. Wine Co.*, 95 Mich. 117; s. c., 54 N. W. Rep. 643.

Where a corporation is sued upon a contract signed by a stockholder individually, there being no evidence of any original authority, express or implied, or of a subsequent ratification, it is proper to direct a verdict for defendant. *Donoghue v. Ry. Co.*, 87 Mich. 13; s. c., 49 N. W. Rep. 512.

One who has general management of a corporation is authorized to execute an appeal bond for it. *Sarmiento v. Davis Co.*, 63 N. W. Rep. 205.]

2. To have a common seal, which they may alter at pleasure;

A law uniform with laws of other States, relating to sealing of deeds, etc., established. Act of 1895, at p. 71. Proof of instruments executed under seal. Act of 1893, at p. 66.

[Corporate seal affixed to a written instrument is prima facie evidence that it was affixed by proper authority. *Benedict v. Denton*, Walker, 336.

Where agents executing an instrument for a corporation sign their own names and affix their own seal, such seals are merely nugatory, and the instrument is to be regarded as the simple contract of the corporation. *Regents v. Detroit*, etc., Soc., 12 Mich. 138.

The cashier of a bank, being usually the keeper of its seal, is presumptively the proper person to affix such seal to a corporate conveyance. *Merrill v. Montgomery*, 25 Mich. 73.

In absence of proof, authority of president to affix corporate seal to an instrument will be presumed. *Gray v. Waldron*, 101 Mich. 613; s. c., 60 N. W. Rep. 288.]

3. To elect, in such manner as they shall determine to be proper, all necessary officers, and fix their compensation, and define their duties and obligations;

See § 4161a3, and cross-references.

[Corporations may appoint agents by parol. *Detroit v. Jackson*, 1 Doug. 106; *Johns v. People*, 25

Mich. 499; *Taymouth v. Koehler*, 35 id. 22. And parol proof is admissible as to the official character of corporate officers or agents. *Cahill v. Ins. Co.*, 2 Doug. 124; *Druse v. Wheeler*, 22 Mich. 439; *Johns v. People*, supra.

A corporation is bound by acts of its officers de facto; and it need not be shown that they were regularly elected. *Cahill v. Ins. Co.*, 2 Doug. 124. The rule recognizing the rights of officers de facto applies to corporations de facto. *Clement v. Everest*, 29 Mich. 19.

Authority of corporate agent may be inferred from adoption or recognition of his acts by the corporation. *Detroit v. Jackson*, 1 Doug. 106.

It is immaterial, as against strangers, whether person acting as managing director received a specific appointment from the board of directors, if his services as such have been invariably recognized and accepted by the corporation. *Walker v. Detroit*, etc., Co., 47 Mich. 338; s. c., 11 N. W. Rep. 187.

The official character of the last secretary of a corporation is not destroyed by mere lapse of time so as to prevent his releasing a mortgage given by the corporation. *Kimball v. Goodburn*, 32 Mich. 10.

Power to appoint a temporary secretary is incidental to corporate meetings. *Bank v. St. Joseph*, 46 Mich. 526; s. c., 9 N. W. Rep. 838. A corporation has no memory except through its officers and agents. *Ry. Co. v. Wheeler*, 20 Mich. 419.

In absence of charter provision to contrary, presumption is that president, secretary and treasurer are authorized to make all necessary contracts in transacting the ordinary business of the corporation within the legitimate scope and purposes of its organization. *Eureka*, etc., Works v. Bresnahan, 60 Mich. 332; s. c., 27 N. W. Rep. 524. A contract made by the superintendent and manager of a corporation, relating to its ordinary business, binds the corporation. *Whitaker v. Kilroy*, 70 Mich. 635; s. c., 38 N. W. Rep. 606.

Persons dealing with mining superintendents may, in absence of notice, assume their authority to cover all the ordinary local business. *Mining Co. v. Senter*, 26 Mich. 73.

The general agent and manager of a mining company is presumably empowered to sell its personal property. *Scudder v. Anderson*, 54 Mich. 122; s. c., 19 N. W. Rep. 775. But, without being specially empowered, he has no power to make promissory notes in company name. *Iron Mine v. Bank*, 39 Mich. 644; see, also, *Iron Mine v. Bank*, 44 id. 344; s. c., 6 N. W. Rep. 823.

A corporation can give its treasurer parol authority to execute a promissory note in its name. *Odd Fellows v. Bank*, 42 Mich. 461; s. c., 4 N. W. Rep. 158.

It is not among the implied powers of any corporate officer to bind the corporation to an increase of capital stock; as by promising to pay an employee for his services in such stock. *Finley & L. Co. v. Kurtz*, 34 Mich. 89.

Whether president of a corporation can confess judgment therefor without authority from directors, *quere*. *Jones v. Avery*, 50 Mich. 326; s. c., 15 N. W. Rep. 494. Treasurer, as such, has no such power. *Stevens v. Iron Co.*, 57 Mich. 427; s. c., 24 N. W. Rep. 160.

The novation of a debt due from a corporation is within authority of a general agent who has power to pay its debts. *Mulcrone v. Lumber Co.*, 55 Mich. 622; s. c., 22 N. W. Rep. 67.

President cannot make arrangement which will release his own personal liability or that of his co-directors. *Gallery v. Bank*, 41 Mich. 169; s. c., 2 N. W. Rep. 193.

Treasurer cannot bind corporation by written admissions as to salary of agents; fixing such salary belongs to board of directors. *Mfg. Co. v. McAllister*, 36 Mich. 327.

President and secretary are proper officers to agree upon an arbitration. *Fitch v. Hydraulic Co.*, 44 Mich. 74; s. c., 6 N. W. Rep. 91.

Directors cannot use corporate funds in payment of a note made by them to the president as payee, and for its benefit. *Id.*

Officers empowered by directors to let a contract cannot lawfully take an interest therein. *Flint v. Dewey*, 14 Mich. 477. Whether ratification by

## General powers — Stat., § 4860.

the board with full knowledge could render such a contract binding on the company, *quere*. *Id.* The action of an officer in taking an interest in a contract is not void, but voidable. *Richardson v. Welch*, 47 Mich. 309; *s. c.*, 11 N. W. Rep. 172.

Courts of equity cannot interfere with action of such officers as a corporation has placed in charge of its affairs, unless such action exceeds their discretion or amounts to aggravated misconduct equivalent to fraud. *Cicotte v. Anciaux*, 53 Mich. 228; *s. c.*, 18 N. W. Rep. 793.

Possession by an officer of a company is not the company's possession unless held for that purpose. *Doyle v. Mizner*, 40 Mich. 160.

That a person is a company's managing agent, and that a trespass on another's land is, in a course of business, under his authority as agent, would not necessarily make the trespass his. *Bath v. Caton*, 37 Mich. 190.

Corporate officers act in a judicial capacity and are accountable in equity as trustees; but if they have gone out of office, the remedy against them for an appropriation of corporate funds to their own use is at law and not in equity, if discovery is not sought. *Bridge Co. v. Van Etten*, 36 Mich. 210.

Fact that person having general direction of a corporation is also its president does not operate as a limitation of the powers exercised by such agents or managers. *Ceeder v. Lumber Co.*, 86 Mich. 541; *s. c.*, 49 N. W. Rep. 575.

President of a manufacturing company, who is also its manager, must be presumed to have all the powers of any agent exercising like control or management, and to have authority to do what is usually and ordinarily done by such agents or managers. *Id.*

Where, under by-laws of a corporation, same person held the office of president, treasurer or general superintendent, large powers being vested in the holders of those offices, for five years, during which no corporate meetings were held, it was held that he could bind the corporation by an agreement which assigned part of its accounts as collateral security to a bank from which the corporation had borrowed money. *Bank v. Purlier*, 84 Mich. 364; *s. c.*, 47 N. W. Rep. 502.

Corporations are bound by the acts of their agents to same extent, and under same circumstances, as natural persons. *Lumber Co. v. Williams*, 73 Mich. 86; *s. c.*, 40 N. W. Rep. 940.

Compromising claims, settling unliquidated damages, and releasing debts are not acts which come within the ordinary duties of a cashier, book-keeper, or corresponding clerk. *Id.* Right of corporation to terminate official relations of an employee discussed. *Chamberlain v. Stove Works*, 103 Mich. 124; *s. c.*, 61 N. W. Rep. 532.

Unauthorized bond given by the president of a corporation held no defense to an action of foreclosure by the corporation against the obligee. *Bank v. Levanseler*, 73 N. W. Rep. 399.]

4. And to make by-laws and regulations consistent with the laws of the State, for their own government, and for the due and orderly conducting of their affairs, and the management of their property.

By-laws may provide for what. § 4861. Manner of electing director prescribed by by-laws. § 4161a3.

[**Powers in general.**—A corporation possesses only those powers conferred by its charter, either expressly or as incidental to its existence. *Bank v. Niles*, 1 Doug. 401; *Orr v. Lacey*, 2 id. 230. It has such powers and capacities as are given it, and none other; and every abuse of such powers is a cause for forfeiture of franchise. *People v. Bank*, 1 Doug. 282; *Atty.-Gen. v. Bank, Walker*, 90. Grants of corporate franchises are to be strictly construed. *McMillan v. R. R. Co.*, 16 Mich. 79. The grant of specific powers is an exclusion of other powers in reference to same subject-matter. *Bank v. Niles*, *supra*.

Contracts in violation of the charter are void.

*Orr v. Lacey*, 2 Doug. 230; *Hurlbut v. Britain*, id. 191; *Smith v. Barstow*, id. 155; *Bank v. Niles*, 1 id. 401.

Where by its charter a corporation is confined to one kind of business it cannot engage in any other. Thus, a railroad company cannot engage in banking. *People v. R. R. Co.*, 12 Mich. 380.

A mining corporation may buy timber. *Mining Co. v. Senter*, 26 Mich. 73. But may not issue accommodation paper and deliver it to strangers. *Beecher v. Dacey*, 45 Mich. 92; *s. c.*, 7 N. W. Rep. 689.

There is no legal presumption that a wire company is not authorized by its charter to go into any branch of the wire business. *Wire Co. v. Moore*, 55 Mich. 610; *s. c.*, 22 N. W. Rep. 62.

A corporation may, in furtherance of the object of its creation, contract with an individual, though the effect of the contract may be to impose upon the company the liability of a partner. *Paper Co. v. Courier Co.*, 67 Mich. 152; *s. c.*, 34 N. W. Rep. 556.

A contract entered into by a corporation before filing its articles, as required by statute, may be subsequently ratified. *Whitney v. Wyman*, 101 U. S. 392.

Whether a corporation can be restrained from dealings prohibited to a stockholder merely because it has such a stockholder, *quere*. *Real v. Chase*, 31 Mich. 490.

The bona fide transferee of negotiable paper issued by a corporation having power so to do may presume that it was authoritatively and regularly issued. *Bank v. Barge Co.*, 52 Mich. 438; *s. c.*, 18 N. W. Rep. 206. Corporate notes, given to take up individual obligations of members of the corporation, are not given in the regular course of business, and are presumptively *ultra vires*; and no officer can give them without special authority; and this must be expressly and affirmatively shown to entitle one who takes such notes to the protection of a bona fide holder. *McLellan v. File Works*, 56 Mich. 579; *s. c.*, 23 N. W. Rep. 321; *Bank v. Knitting Works*, 68 Mich. 620; *s. c.*, 36 N. W. Rep. 696.

Power to execute a mortgage upon its personality to secure its debts is incident to the existence of a corporation, and can be taken away only by express or clearly implied legislative prohibition. *Walrath v. Campbell*, 28 Mich. 111.

Power of a corporation, independent of statutory provisions, to mortgage its franchises considered. *Joy v. Plank Road Co.*, 11 Mich. 155.

A corporation regularly organized can mortgage or convey its rights, property and franchises as though it were an individual, subject only to legislative restrictions; and it may do so whether the rights were conferred on the original incorporators or on subsequent stockholders. *Detroit v. Gas Light Co.*, 43 Mich. 594; *s. c.*, 5 N. W. Rep. 1039.

Where the only authority for mortgaging corporate property was a resolution of directors, providing for a general mortgage, and that given was not general, but given to secure a particular debt, it could not be sustained in hands of original holder, and without any extension of time or other circumstance making out a case of a mortgage in good faith entitled to protection. *Doyle v. Mizner*, 42 Mich. 332; *s. c.*, 3 N. W. Rep. 968.

A chattel mortgage executed by president, secretary and treasurer was valid, although no formal action was taken authorizing the same, but was agreed upon and assented to by all directors and stockholders assembled together. *Eureka, etc., Works v. Bresnahan*, 60 Mich. 332; *s. c.*, 27 N. W. Rep. 524.

Although a general agent in Michigan and a financial officer in New York were the only stockholders having beneficial interest in the corporation, a person dealing with the corporation could not hold them as partners. *N. Y. Iron Mine v. Bank*, 39 Mich. 644.

Where corporate bonds were issued to be sold for cash, but were, in fact, pledged as collateral security, objection to this disposition of them can be raised only by the corporation or its stockholders, unless existing rights are affected. *Beecher v. Rolling Mill Co.*, 45 Mich. 103; *s. c.*, 7 N. W. Rep. 695.

Corporations are placed upon same footing as natural persons in regard to their contracts and



the implications upon which they may be based. *Cicotte v. Church*, 60 Mich. 552; s. c., 27 N. W. Rep. 682.

A corporation cannot be held to have contracted unless by such agents or officers as have express or implied authority. *Lockwood v. Boom Co.*, 42 Mich. 537; s. c., 4 N. W. Rep. 292. And is not liable for debts of a firm out of which it has been organized, even though there is no difference in membership. *McLellan v. File Works*, 56 Mich. 579; s. c., 23 N. W. Rep. 321. And where it has received benefit of services it cannot repudiate its indebtedness therefor on ground that its by-laws do not permit it to run in debt without order of its directors. *Donovan v. Engine Co.*, 58 Mich. 38; s. c., 24 N. W. Rep. 819.

An undertaking by all stockholders severally on its behalf does not bind the corporation; where joint action is required by law, individual action is of no avail. *Finley, S. & L. Co. v. Kurtz*, 34 Mich. 89. An agreement with individuals that when they become incorporated they will give plaintiff a certain amount of paid-up stock is not a dealing with the corporation itself, but a personal bargain. *Carmony v. Powers*, 60 Mich. 26; s. c., 26 N. W. Rep. 801.

The liability of a corporation for the acts of one who, with its assent, has controlled and sold its paper for his own benefit is no less than that of an individual would be. *Bank v. Barge Co.*, 52 Mich. 165; s. c., 17 N. W. Rep. 790.

Where articles of association prohibited corporate officers from making purchases on credit, held, that the corporation was not liable for such purchases, unless subsequently ratified by it. *Hotchin v. Kent*, 8 Mich. 526.

A corporation cannot ratify any contract which it has no power to make in the first instance. *Bridge Co. v. Jasper*, 68 Mich. 441; s. c., 36 N. W. Rep. 213.

An agreement by two of the three stockholders of a corporation, who are also directors, that, in consideration of the purchase of stock, the vendee shall be employed as business manager for two years, and if at end of that time he wishes to retire they will repurchase his stock at a stated price, is void as against public policy, unless assented to by the other stockholder. *Wilbur v. Stoepel*, 82 Mich. 344; s. c., 46 N. W. Rep. 724.

There is no legal identity between individuals and a corporation which prevents it from becoming a purchaser in good faith from one of its members. *Wrecking Co. v. McMorran*, 73 Mich. 467; s. c., 41 N. W. Rep. 510.

A corporation may contract with an individual in furtherance of the object of its creation, though the effect may be to impose upon it a partner's liability. *Paper Co. v. Courier Co.*, 67 Mich. 152; s. c., 34 N. W. Rep. 556.

Where a corporation has no power to convey a title to or interest in its property, it is not estopped from claiming that its contract made no such conveyance. *College v. Rideout*, 82 Mich. 94; s. c., 46 N. W. Rep. 373.

Where stockholders sign articles of association, knowing that the object of the organization is to engage in a certain business therein specified, and in which the corporation does engage, and thereby incurs liabilities, the corporation will not be permitted, in a suit to enforce such liabilities, to plead a want of authority under the law to engage in said business. *Bank v. Elevator Co.*, 90 Mich. 550; s. c., 51 N. W. Rep. 641.

A railroad company having contracted with chief owner of stock of another company for purchase of his stock in order to acquire such company's roadbed, etc., and given its note therefor, could not, after execution of contract and utilization of property, deny, in a suit upon the note, its power to make contract and execute note. *Dewey v. Toledo, etc., Co.*, 91 Mich. 351; s. c., 51 N. W. Rep. 1063.

A corporation cannot be held to have contracted unless its officers or agent who make the contract have express or implied authority to bind the corporation. *Mining Co. v. Mining Co.*, 80 Mich. 491; s. c., 45 N. W. Rep. 351.

Individual directors have no power to bind the corporation. *Id.*

An implied promise cannot be raised against a corporation, where by its charter it can only con-

tract in the prescribed way, except it be a promise for money received or property appropriated under the contract. *Petz v. Detroit*, 95 Mich. 169; s. c., 54 N. W. Rep. 644.

Fact that work done under an employment not authorized by the proper officer was necessary and beneficial does not render the corporation liable. *Willis v. Toledo, etc.*, 72 Mich. 160; s. c., 40 N. W. Rep. 205.

Where a corporation succeeds to the business of a copartnership, which it continues, and assumes the contracts and obligations of the partnership, it is liable to same extent as the copartners would have been for a failure to furnish suitable machinery to a contractor under one of said firm's contracts. *Piette v. Brewing Co.*, 91 Mich. 605; s. c., 52 N. W. Rep. 152.

An officer's title added to his signature does not necessarily make the paper the contract of his corporation; it may be regarded as a mere personal description. *Knickerbocker v. Wilcox*, 83 Mich. 200; s. c., 47 N. W. Rep. 123.

President of a New Jersey corporation, who resides in New York, may, if authorized so to do by the corporation, execute in its behalf, acknowledged before a commissioner of deeds for Michigan in New York, an assignment of a Michigan mortgage owned by a corporation, so as to entitle the assignment to record in Michigan. *Gray v. Waldron*, 101 Mich. 613; s. c., 60 N. W. Rep. 288.

A chattel mortgage executed by officers of an insolvent corporation with consent of all stockholders, is valid. *Axle Co. v. Winans*, 64 N. W. Rep. 23.

In avoidance of mortgage executed by it, corporation cannot deny its authority to take and hold the mortgaged premises. *Butterworth et al. v. Bank*, 72 N. W. Rep. 990. When mortgage executed by a corporation may be enforced against it though ultra vires. *Id.*

§ 4861. All corporations may, by their by-laws, where no other provision is specially made, determine the manner of calling and conducting their meetings, the number of members that shall constitute a quorum, the number of shares that shall entitle the members respectively to one or more votes; the mode of voting by proxy, the mode of selling shares for the non-payment of assessments, and the tenure of office of the several officers; and they may prescribe suitable penalties for the violation of their by-laws, not exceeding in any case twenty dollars, for any one offense; but no such by-laws shall be made by any corporation, repugnant to the provisions of its charter.

Meetings, how called, etc. § 4161a2. and cross-references. Directors to be chosen annually. § 4161a3. Majority to constitute a quorum. § 4161a9. Assessments. § 4161b.

[A corporation has implied powers to make by-laws, unless expressly or impliedly restrained from so doing by its charter. *Williams v. Detroit*, 2 Mich. 560.

By-laws are void if unreasonable. *Allhutt v. Subsidiary Court*, 62 Mich. 110; s. c., 28 N. W. Rep. 802. Or if contrary to the general principles of the common law or the policy of the State. *Pulford v. Fire Department*, 31 Mich. 458.

Ex post facto by-laws are invalid. *Id.*

By-laws must apply to all members alike. *Stewart v. Society*, 41 Mich. 67; s. c., 1 N. W. Rep. 931. Where charter empowers president and directors to make by-laws, the president and majority of directors may make them. And an allegation that they were made by president and directors is supported by proof that they were made by the president and such majority. *Cahill v. Ins. Co.*, 2 Doug. 124.]



Meetings; holding lands; continuance — Stat., §§ 4862–4867.

§ 4862. The first meetings of all corporations, unless otherwise provided for in the acts under which they are incorporated, or in their articles of association, shall be called by a notice, signed by one or more of the members or persons associating to form the corporation, setting forth the time, place and purpose of the meeting; and such notice shall, at least twenty days before the meeting, be delivered to each member, or published in some newspaper of the county where the corporation shall be established, or if no newspaper be published in the county, then in a newspaper published in an adjoining county, or in the city of Detroit.

See § 4161a2, and cross-references.

§ 4863. Whenever, by reason of the death, absence, or other legal impediment of the officers of any corporation, there shall be no person duly authorized to call or preside at a legal meeting thereof, any justice of the peace of the county where such corporation is established may, on a written application of three or more of the members thereof, issue a warrant to either of the said members, directing him to call a meeting of the corporation, by giving such notice as shall have been previously required by law; and the justice may, in the same warrant, direct such person to preside at such meeting until a clerk shall be duly chosen and qualified, if there shall be no other officer present legally authorized to preside thereat.

See § 4161a2, and cross-references.

§ 4864. When all the members of a corporation shall be present at any meeting, however called or notified, and shall sign a written consent thereto on the record of such meeting, the doings of such meeting shall be as valid as if legally called and notified.

See § 4161a2, and cross-references.

[Where articles provide that notice of regular meetings shall be given by mail, oral notice of a meeting to assess stock is not sufficient as to persons who did not appear at said meeting in response thereto. *Westcott v. Mining Co.*, 23 Mich. 145.]

§ 4865. The members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

See § 4161a2-3, and cross-references. Directors have power to fill vacancies. § 4161a6.

§ 4866. Every such corporation may hold land to an amount authorized by law, and may convey the same and may receive sub-

scriptions to its capital stock in lands situate in the State of Michigan, or may receive donations of lands situate in the State of Michigan, to assist or enable such corporation to perform or complete any work of public improvement in which company may be engaged in pursuance of its charter, and may sell and convey the same; and whenever the capital stock of any such corporation is divided into shares, and certificates thereof are issued, such shares may be transferred by indorsement and delivery of the certificates thereof, such indorsement being by the signature of the proprietor, or his attorney or legal representative; but such transfer shall not be valid, except between the parties thereto, until the same shall have been so entered on the books of the corporation as to show the names of the parties by and to whom transferred, the number and designation of the shares, and the date of the transfer. And such corporation may at any time amend its articles of association, by filing amended articles of association in the office of the secretary of State, which said amended articles of association shall be made in all respects consistent with the provisions of the act or acts under which such corporation may be organized, and shall be executed by said corporation under its corporate seal, and by stockholders of said corporation owning at least a majority of all the capital stock of said corporation, under their seals, and duly acknowledged.

See § 4161b3, note and cross-references. Stock to be transferred on books. § 4161b5, note and cross-references. See note to § 8136.

[A corporation with legal capacity to hold property may take and hold it in trust. *White v. Rice*, 70 N. W. Rep. 1024.]

§ 4867. All corporations whose charters shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless continue to be bodies corporate, for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which such corporations have been or may be established.

See Const., art. XV, § 10.

[The purpose of granting three years for closing up affairs was not to limit but to enlarge corporate privileges so that they might continue business throughout the whole chartered period. *Bewick v. Harbor Co.*, 39 Mich. 701.]

A Michigan corporation can begin legal proceedings in its own name at any time within three years after expiration of its franchises, and can continue them to a close unless superseded by trustees or receivers. *Id.*

## Toll-company franchises; sale under execution — Stat., §§ 4868-4876.

The repeal of a general law authorizing formation of corporations for definite periods does not necessarily shorten the corporate existence or destroy all corporate franchises. *Id.*

Above section applied. *Montgomery v. Merrill*, 18 Mich. 338.]

§ 4868. When any judgment shall be recovered against any turnpike or other corporation, authorized to receive toll, the franchise of such corporation, with all the rights and privileges thereof, together with all their corporate property, both real and personal, may be taken on execution, and sold at public auction.

See § 4161d1, and cross-references. Judgments and executions. §§ 7697-7702.

[See *James v. Pontiac, etc., Co.*, 8 Mich. 91; *Joy v. Jackson, etc., Co.*, 11 id. 155; *Newberry v. Iron Co.*, 17 id. 141; *Blair v. Compton*, 33 id. 414.]

§ 4869. The officer having such execution against any corporation mentioned in the preceding section, shall, thirty days, at least, before the day of sale of the franchise, or other corporate personal property, give notice of the time and place of sale, by posting up a notice thereof in any township in which the clerk, treasurer, or any one of the directors of such corporation may dwell, and also by causing an advertisement of the sale, expressing the name of the creditor, the amount of the execution, and the time and place of sale, to be inserted three weeks successively in some newspaper published in any county in which either of the aforesaid officers may dwell, if any such there be, and if no newspaper be published in any such county, then in the State paper.

Service of any legal process. § 4161c9.

[Corporate franchises were not subject to seizure and sale upon execution at common law, but could be reached only by a proceeding in equity. Authority to sell on execution is based upon this statute, whose provisions must be strictly complied with. The sheriff cannot proceed under the general law concerning executions. *James v. Pontiac, etc., Co.*, 8 Mich. 91.]

§ 4870. The officer who may levy any execution, as prescribed in the preceding section, may adjourn the sale from time to time as may be necessary, until the sale shall be completed.

No stay of execution. § 6863.

§ 4871. In the sale of the franchise of any corporation, the person who shall satisfy the execution, with all legal fees and expenses thereon, and shall agree to take such franchise for the shortest period of time, and to receive during that time all such toll as the said corporation would by law be

entitled to demand, shall be considered the highest bidder.

[The franchise is not sold absolutely, but only for a limited time; and competition in bidding is confined to the question of time. The corporation is not deprived of its absolute title, nor does the purchaser assume or have imposed upon him, any of the duties and obligations of the corporation. *James v. Pontiac, etc., Co.*, 8 Mich. 91; *Joy v. Jackson, etc., Co.*, 11 id. 166, 169.]

§ 4872. The officer's return on such execution shall transfer to the purchaser all the privileges and immunities which by law belonged to such corporation, so far as relates to the right of demanding toll; and the officer shall, immediately after such sale, deliver to the purchaser possession of all the toll-houses and gates belonging to such corporation, in whatever county the same may be situated; and the purchaser may thereupon demand and receive all the toll which may accrue during the time limited by the terms of his purchase, in the same manner, and under the same regulations, as such corporation was before authorized to demand and receive the same.

See § 4161c5, and cross-references.

§ 4873. Any person who may have purchased, or shall hereafter purchase under the provisions of this chapter, the franchise of any turnpike or other corporation, and the assignees of such purchaser, may recover, in an action on the case, any penalties imposed by law for an injury to the franchise, or for any other cause, and which such corporation would have been entitled to recover during the time limited in the said purchase of the franchise; and during that time the corporation shall not be entitled to prosecute for such penalties.

§ 4874. The corporation whose franchise shall have been sold as aforesaid, shall, in all other respects, retain the same powers, and be bound to discharge the same duties, and liable to the same penalties and forfeitures, as before such sale.

[See *Joy v. Jackson, etc., Co.*, 11 Mich. 155, 169.]

§ 4875. Such corporation may, at any time within three months after such sale, redeem the franchise, by paying or tendering to the purchaser thereof the sum that he shall have paid therefor, with ten per cent. interest thereon, but without any allowance for the toll which he may have received; and upon such payment or tender, the said franchise, and all the rights and privileges thereof, shall revert and belong to said corporation, as if no such sale had been made.

§ 4876. Whenever any damages may have been, or may hereafter be assessed in favor of any person, for any injury sustained in his property by the doings of any such turnpike or other corporation authorized to re-

Bill against stockholders; returns to assessors, etc.—Stat., §§ 4877–4884.

ceive toll, or pay for the transportation of persons or property, and the said damages shall remain unpaid for the space of thirty days after such assessment, such person may have a warrant of distress against such corporation, for the damages assessed, together with interest thereon, and his reasonable costs, and the same proceedings shall be had thereon, and with the same effect, as upon an execution issued upon a judgment against such corporation.

See § 4860, subd. 1, and cross-references.

§ 4877. All the proceedings aforesaid respecting the levy of executions and warrants of distress, may be had in any county in which either the creditor, or the president, or any director, or the treasurer or clerk of the corporation may reside, or in which such corporation has personal or real estate.

See § 4860, subd. 1, and cross-references.

§ 4878. When the officers or members of a corporation, or any of them, are liable for any debts of the corporation, or for any acts of such officers or members, respecting the business of the corporation, and also when any of the said officers or members shall be liable to contribute, for money paid by any other or others of them, on account of any such debts or acts, the money may be recovered by a bill in chancery; and the said court may make all such orders and decrees therein as may be necessary to do justice between the parties.

See §§ 4886 et seq.

[See *Pettibone v. McGraw*, 6 Mich. 441.]

§ 4879. Every act of incorporation passed

or which shall be hereafter passed, shall, at any time, be subject to amendment, alteration or repeal, at the pleasure of the legislature: Provided, That no act of incorporation shall be repealed, unless for some violation of its charter or other default, when such charter shall contain an express provision limiting the duration of the same.

See Const., art. IV, § 43, note and cross-references.

[Amendments must be in accordance with constitutional provisions, and not such as to deprive a corporation of its property without due process of law. *Detroit v. D. & H. R. R. Co.*, 43 Mich. 140; s. c., 5 N. W. Rep. 275.]

§ 4880. It shall be the duty of the clerk of every corporation within this State, whose capital stock is or shall be subject to taxation for county or township purposes, and if there be no such clerk, then of the directors of such corporation, annually, be-

tween the fifteenth day of March and the first day of April, to make returns in person or by mail, to the supervisor of each township, and the assessors of each ward or district in any city in this State, in which any shareholder in such corporation shall reside; which return shall state the name of each owner residing in such township or city, the number of shares belonging to each on the fifteenth day of March of that year, and the par value of such shares.

See § 4161d, and cross-references.

§ 4881. If any clerk or director mentioned in the preceding section, shall refuse or neglect to make such return, or shall willfully make a false return, he shall forfeit the sum of fifty dollars.

§ 4882. If any shareholder shall fraudulently transfer any share in either of the corporations mentioned in the twenty-first section of this chapter, for the purpose of avoiding taxation, he shall forfeit a sum equal to one-half the par value of the shares so transferred.

See § 4161b5, and cross-references. Taxation of corporate property, etc. § 4161d, and cross-references.

§ 4883. The cashier of each bank and the secretary or clerk of each incorporated railroad, canal or turnpike company, shall, on the first Monday of October in each year, or within fifteen days previous thereto, make a return to the State treasurer, verified by his oath, stating the amount of capital stock of such bank or railroad, canal or turnpike company then actually paid in, and in default thereof, the whole capital stock mentioned in the act of incorporation of such bank or company shall, for the purpose of computing the State tax payable by such bank or company, be deemed to have been paid in.

Taxation of corporate property, etc. § 4161d. Statement of shares of stock to be filed with secretary of State, penalty for neglect. §§ 9351-9352.

§ 4884. It shall be the duty of the attorney-general, whenever, and as often as shall be required by the governor, to examine into the affairs and condition of any bank or banks, or other corporations in this State, and report such examination in writing, together with a detailed statement of facts, to the governor, who shall lay the same before the legislature; and for that purpose the said attorney-general shall have power to administer all necessary oaths to the directors and officers of any such bank or other corporation, and to examine them on oath in relation to the affairs and condition thereof, and to examine the vaults, books, papers and documents belonging to such bank, or pertaining to its affairs and condition; and



the legislature, or either branch thereof, shall have full power to examine into the affairs and condition of any bank or other corporation in this State at all times; and for that purpose, any committee appointed by the legislature, or either branch thereof, shall have full power to administer all necessary oaths to the directors, officers and stockholders of such bank or other corporation, and to examine them on oath in relation to the affairs and condition thereof, and to examine the vaults, safes, books, papers and documents belonging to such corporation, or pertaining to its affairs and condition, and to compel the production of all keys, books, papers and documents, by summary process to be issued on application to any court of record, or any judge thereof, under such rules and regulations as the said court may prescribe.

§ 4885. Whenever any corporation, now existing or hereafter formed, may have conveyed all their corporate property, real and personal, together with their franchises, growing out of or appertaining thereto, or together with all their corporate franchises, by way of mortgage or deed of trust, in case of the sale of the same thereunder, the purchasers at such sale and their associates shall be entitled to have and exercise all the privileges and franchises held by such corporation, and shall be deemed and taken to be the true owners of its corporate rights, and to be corporators vested with all the rights, powers, privileges, and benefits conferred by law or the statutes of this State upon such corporations, in the same manner, and to the same extent, as if they were the original corporators at the formation of such corporation; and they shall, within thirty days after such sale shall become absolute, file articles of association, together with a copy of the order confirming the sale, in the office of the secretary of State, and in such other office or offices as the original articles of association or corporation were required to be filed in, and they shall hold title to and enjoy all property acquired by, or donated to, such corporation which may have been purchased by them at such sale; and such (successor) corporation may issue, and themselves hold, new stock in said corporation to such an amount and of such denomination as was prescribed in the articles of association or charter of the original corporation. After filing the new articles of association as required by this act, the old officers of said corporation shall be superseded, and the old stock in said corporation shall be deemed forfeited and extinguished, and may be cancelled on the books of said corporation; and the new stockholders, and the officers by them chosen or elected, shall, in the law, be deemed and taken to be the stockholders and officers of said corporation, and the said corporation shall not be liable for any debts or obligations, except those by it thereafter contracted. But no prior mortgage or

lien shall be in any way affected by such proceedings, and all property whatsoever, if any, that shall not be sold, shall remain liable for all the debts of such original corporation, and no liability of any corporators, director, or other persons whatsoever shall be in any way lessened or affected by any proceeding or act authorized by this act: Provided, That in making such sale the property essential to the exercise of corporate rights, together with the corporate franchises, shall be deemed an entire thing, and shall be sold as such, separate from any other property mortgaged.

See § 4161c5, and cross-references. Purchaser entitled to dividends. § 7701.

§ 4885a. In all elections for directors of any corporation organized under any general law of this State, other than municipal, every stockholder shall have the right to vote in person or by proxy, the number of shares of stock owned by him for as many persons as there may be directors to be elected; or to cumulate said shares, and give one candidate as many votes as will equal the number of directors multiplied by the number of shares of his stock; or to distribute them on the same principle among as many candidates as he shall think fit. All such corporations shall elect their directors annually, and the entire number of directors shall be balloted for at one and the same time and not separately: \* \* \*

See § 4161a3, note and cross-references.

[One who is named as a director in the articles of incorporation, and who has acted as such, cannot be removed by parol, or by the individual action of other directors. *Copland v. Miehing Co.*, 33 Mich. 2. In an action for re-election of directors, held, that the directors whose duty it is to call meetings for election, and whose right of office is attacked, are proper parties. *Dusenburg v. Looker*, 67 N. W. Rep. 986.]

§ 4886. Whenever, by the Constitution or laws of this State, the stockholders of any corporation are individually liable for any debts of such corporation, the remedy for the enforcement of such liability shall be as hereinafter prescribed, and not otherwise: Provided, That this act shall not apply to cases where the suit is for labor, and the action is brought by the person who performed the labor.

See Const., art. XV, § 7, and cross-references; and § 4878.

[Who are, and who are not, stockholders. *O'Brien v. Fulkerson*, 75 Mich. 554; s. c., 42 N. W. Rep. 979.

As to individual liabilities of stockholders of telephone companies for labor, see *Ripley v. Evans*, 87 Mich. 217; s. c., 49 N. W. Rep. 504. In a proceeding under sections 4886-4889, to enforce individual liability, sheriff's return of an

## Enforcement of stockholders' liability — Stat., §§ 4887-4894,

execution against the corporation, issued to the proper county, unsatisfied, is conclusive. *Id.*

Where stock is issued to one in consideration of his using his influence with others to buy it, the service not taking any time from his business, he is liable to creditors for amount of his subscription. *Bank v. Stove Polish Co.*, 63 N. W. Rep. 514.

A stockholder who has paid for his stock is not personally liable to creditors because corporation carries on business before its stock has been subscribed. *American, etc., Co. v. Buckley*, 65 N. W. Rep. 291.

An action to enforce a stockholder's liability will not lie where the corporation is in the hands of a receiver. *Rouse, Hazard & Co. v. Detroit Cycle Co.*, 69 N. W. Rep. 511.]

§ 4887. No proceeding shall be taken to enforce such liability until after a judgment has been recovered against the corporation on account of such indebtedness, and an execution issued upon such judgment to the county in which its principal office is situated or its business carried on has been returned unsatisfied, in whole or in part.

See Const., art. XV, § 7, and cross-references.

§ 4888. Whenever judgment has been recovered against any corporation for an indebtedness for which the stockholders of such corporation are by law liable, and an execution has been issued thereon as above provided, and returned unsatisfied, the court, upon application of the plaintiff, shall enter an order in such suit requiring the secretary, or other proper officer of such corporation, within a time designated in such order, to file in said cause a statement, under oath, of the names and residences of all persons who appear by the books of such corporation, or that such officer has reason to believe were stockholders therein at the time the debt for which such judgment was recovered, accrued, and the amount of stock held by each of said persons, and upon service upon such officer of a duly certified copy of such order, it shall be his duty to comply therewith.

See § 4860, subd. 1, and cross-references. Officer of company must give certificate. § 7699.

[Capital stock is a trust fund for benefit of corporate creditors. *Dwight v. Lumber Co.*, 82 Mich. 624; s. c., 47 N. W. Rep. 102. And if not paid in full chancery may require it to be paid up. *Washburn v. Green*, 133 U. S. 30; s. c., 10 Sup. Ct. Rep. 280.]

§ 4889. The statement mentioned in the last preceding section having been filed, plaintiff may make and file in the case his petition in writing, setting forth:

First. That he has obtained a judgment against the corporation, and the amount thereof;

Second. That execution has been issued thereon and returned in whole or in part unsatisfied, as the same may be, and the sum remaining unpaid thereon;

Third. That the several persons named in

such statement of the officer of the corporation were, at the date the debt accrued on which the judgment was rendered, stockholders in such corporation, and the amount of stock held by each;

Fourth. What was the consideration received by the corporation for the debt on which such judgment was rendered; and praying that judgment may be awarded against such several stockholders in favor of the plaintiff for the sum so as aforesaid averred to be due from said corporation, and that a citation may issue from said court, under the seal thereof, to the said several stockholders, requiring them to appear in said cause on a certain day to be therein named and answer why judgment should not be entered against them as therein prayed. On the filing of such petition, an order for citation to issue shall be made as of course, and it shall be the duty of the clerk of the court immediately to issue the same, which shall be addressed to the several persons named in the petition as stockholders, and may be served by any person in any part of this State. The return day of such citation shall not be less than fifteen nor more than thirty days from the date of its issue. Jurisdiction over any of the persons named in such citation shall be secured by a personal service of the same within this State.

§ 4890. On the return day named in such citation, or at such time thereafter as the court may allow for that purpose, each of the persons so cited and served shall make separate and several answer in writing, signed by him, to such petition; which answer, if the liability be denied, or facts shall be relied upon in defense against such charge of liability, shall contain a statement of such facts, or the specific grounds of defense, and shall be verified by the oath of the respondent.

§ 4891. The issue thus made by the petition and answer, whether of fact or law, shall be tried in the same manner as like issues of fact or law.

§ 4892. On the trial of any issue of fact formed as aforesaid, the judgment against the corporation and the amount thereon remaining unpaid, as shown by the return of the execution thereon, shall be prima facie evidence of the sum due to the plaintiff, but not that the debt on which said judgment was rendered is one for which respondents are personally liable.

§ 4893. Each of the issues so formed shall be deemed and treated as an original suit or cause in respect to the payment of the county jury and stenographer's fees, and the final taxation of costs. The right of review by the supreme court, and the method of procedure to secure it, shall be in all respects the same as in a common law trial.

§ 4894. If any such respondent shall answer admitting the facts set forth in such petition, or if default in answering shall be



made by any of them, judgment shall at once be rendered against such respondent, severally, for the amount remaining unpaid of the judgment against said corporation, upon proof being made that the debt is one for which such respondent, as stockholder, is personally liable.

§ 4895. If any such issue of law or of fact shall be determined adversely to the respondent, judgment shall thereupon be awarded against him for the full amount remaining unpaid of the judgment against such corporation, if it shall have been determined that such judgment was for a debt for which such respondent is personally liable as a stockholder in said corporation, or upon proof of that fact.

§ 4896. After the several issues so formed shall have been determined and judgment awarded against the several persons named in such petition, and personally served with citation to appear as hereinbefore provided, who have been adjudged liable, the court shall make an order in the cause apportioning between them the sum for which they have thus been severally adjudged liable, pro rata, according to the stock held by each. If any of the respondents shall refuse or neglect to pay the amount apportioned against him, for the period of fifteen days thereafter, an execution shall be issued against his goods and chattels for the collection thereof.

§ 4897. On the return of such execution unsatisfied in whole or in part, or if for any cause there shall be a failure to collect of any of the respondents the sum so as aforesaid apportioned against him, the court shall have power, and it shall be its duty on application by or on behalf of the plaintiff, and the fact being made to appear, to reapportion the sum so remaining uncollected, on the basis of section eleven of this act\* provided, among the remainder of said respondents so adjudged liable, and an execution shall issue for the collection thereof in like manner as provided in said last-named section.\*

§ 4898. Any stockholder who shall be compelled to pay more than his pro rata share of the debts of the corporation shall be entitled to enforce contribution from such other of the stockholders as are also liable for such debt and have not contributed their due proportion in payment thereof.

§ 4899. All acts and parts of acts inconsistent with this act,† or giving any other or different remedy, or form of remedy, are hereby repealed.

§ 4900. (As amended June 1, 1893.) All corporations formed under the laws of this State, and whose principal office for the transaction of business shall be located without the limits of this State, are hereby required when such corporations have an

office within this State, to keep a list of all stockholders of such corporation, together with a statement of the number of shares held by each stockholder, and a transfer-book of the stock thereof, at their agency or office in this State, and if there be more than one, then at some one of such agencies or offices to be designated by the officers of such corporation: Provided, That corporations organized for the purpose of, or engaged in mining for iron, copper, mineral coal, silver or other ores or minerals in the Upper Peninsula, shall not be required to keep a transfer-book of the stock thereof at such agency or office within this State. The failure to keep such list of stockholders, together with a statement of the number of shares of stock held by each, and to keep a transfer-book of the stock at such office or agency in this State, shall be deemed a misuser of the charter of such corporation and work a forfeiture thereof.

See § 4161a5. Books to be kept, where. § 4161b4. Stock to be transferred on books only. § 4161b5.

§ 4901. Any person holding stock in any such corporation may have the same transferred upon the books of such agency within this State, upon the same terms, conditions, and restrictions as is provided by law, or the rules of such corporation, for such transfer at the principal office of such corporation, wherever it may be situated.

See § 4161b5, and cross-references; § 4866.

§ 4902. After the session of the legislature for the year eighteen hundred and fifty-one, previous notice of any application to the legislature for an alteration of the charter of any corporation shall be given in the manner hereinafter provided. When the application is made by or on behalf of the corporation, such notice shall be given and signed by the mayor, president, cashier, secretary, or other principal officer, or a majority of the directors, aldermen, or trustees; and when made by or on behalf of one or more individuals, then by the person or persons making the same; and all such notices shall set forth briefly the nature of the alteration applied for.

See § 4161a1, and cross-references; Const., art. XV, §§ 8, 16.

§ 4903. If the business of such corporation shall be local in its character, and confined to one of the counties of this State, other than those of the Upper Peninsula, such notice shall be published in some weekly newspaper published in such county, or if none in the county, then in one published nearest thereto, for at least four successive weeks; the first publication whereof shall

\*§ 4896.

† §§ 4886-4899.



be at least thirty days prior to the making of such application. If the business of such corporation shall not be local in its character, or if the business authorized by the charter shall be confined chiefly to the Upper Peninsula, then such notice shall be published once in each week for four successive weeks, in some paper published in the city of Detroit; the first publication whereof shall be at least thirty days prior to the making of such application. And if the applicant or applicants shall not be able to get such notice published in such paper as in this section mentioned, after having tendered to the publishers thereof a reasonable compensation therefor, then such notice may be filed in the office of the county clerk of the county where the principal business office of such corporation may be located, and a duplicate thereof in the office of the secretary of State, at least thirty days prior to such application; and such filing shall be deemed a sufficient publication thereof; and proof of the publication or filing of such notice as in this section mentioned, by affidavit of the publisher, or the certificate of the secretary of State, shall accompany every application in this section mentioned.

Publication of notices, etc. § 4161e3.

§ 4904. Nothing in this act contained shall prevent any corporation, or any individual, from applying to the legislature for an amendment of any act of incorporation without such notice as above provided, if the amendment applied for be shown to be necessary to provide for any accident, or to remedy any defect which may have occurred within the period hereinabove required for the giving of such notice nor shall this act prevent the legislature without such notice from amending any charter of a municipal corporation in any particular which they may deem necessary for the public interest; and in either of the cases in this section mentioned, one day's previous notice in either house, by a member thereof, shall be deemed sufficient.

See § 4161a1, and cross-references.

§ 4904a. It shall be lawful for any corporation heretofore or hereafter organized under the laws of this State for mining or manufacturing purposes, whose corporate existence is about to terminate by limitation of law, at its annual meeting next preceding, or at a special meeting called for that purpose, to be held within one year immediately preceding the date of such termination, by a vote of two-thirds of its capital stock, to direct the continuance of its corporate existence for such further term, not exceeding thirty years, as may be expressed in a resolution passed for that purpose. Upon the adoption of such reso-

lution by the stockholders, at such meeting, it shall be the duty of the president and secretary of the corporation to make, sign and acknowledge duplicate articles of association, as in case of a new corporation, to which shall be appended a copy of the proceedings of such stockholders' meeting, certified by the secretary and verified by his oath, which articles of association shall be filed with the secretary of State and with the county clerk of the county where the corporation carries on its business, and be by them recorded in their respective offices at the expense of said corporation, and the copies so filed, the record thereof, or a certified copy of either of such records, shall be prima facie evidence of the facts therein recited; but said articles of association need not set forth, in the case of corporations existing under the provisions of chapter one hundred and twenty-three of Howell's Annotated Statutes of Michigan,\* the cash value of property conveyed to the corporation contemporaneously with its organization nor the names of the directors for the first year.

See Const., art. XV, § 10, and cross-references. Articles of association. § 4161a1.

§ 4904b. (As amended June 7, 1889.) The renewed term of such corporation shall begin from the expiration of the former term thereof, and the corporation thus renewed shall hold and own all the property held and owned by the corporation before renewal, and shall be liable to all its debts, liabilities and obligations as fully as if the former corporate term had not expired; and the directors and officers who were such in fact at the time of the meeting, shall hold and continue in their offices until their successors shall be elected and shall qualify: Provided, nevertheless, That if the call for the meeting to extend the corporate term shall embrace a notice that a number of the directors shall be elected at such meeting, such election may be then held accordingly, and the directors then elected shall, when they shall qualify, become and be the directors of such renewed corporation.

§ 4904e. Any corporation formed under any general law of this State may at a general or special meeting of its stockholders, with the consent of three-fourths of its capital stock, sell and convey all its property and franchises, rights and privileges or any portion of its real property or franchises to any other corporation formed under the same or any similar law for corporate purposes of the same character. No such meeting of stockholders of any corporation shall be legal or valid, or the proceedings thereof of any force or effect unless the directors or other officers or parties calling the same shall cause a notice of the time, place and object of holding the same to be published

\*Mining and smelting companies.

in accordance with the provisions of the law or laws of this State under which such corporation is organized: Provided. That nothing herein contained shall be construed as authorizing any railroad corporation to consolidate its stock, property, or franchises with any other railroad corporation owning a parallel or competing line.

Competing railroad lines not to consolidate. Const., art. XIXa, § 2. Meetings, how called, etc. § 4161a2, and cross-references.

§ 4904f. Any number of persons desiring to purchase the property, franchises, rights and privileges, of any existing corporation may organize a corporation under the law which said corporation is formed, or any similar law, and in accordance with its requirements and provisions, and the corporation so organized, or any corporation already organized under such law, shall have power to purchase the property, (franchises) franchise, rights and privileges of any such existing corporation: Provided, That nothing herein contained shall release in whole or in part said selling corporation from any or all of its liabilities previously contracted: Provided further, That the provisions of this act shall not apply to corporations organized or existing under an act entitled "An act to revise the laws providing for the incorporation of companies for mining, smelting and manufacturing iron, copper, silver, mineral coal and other ores, minerals, and to fix the duties and liabilities of such corporations."

(Approved May 11, 1877.)

See § 4161c5, and cross-references.

## TITLE XXIX. OF COURTS AND JUDICIAL OFFICERS.

Ch. 243. The supreme court.

244B. State court of mediation and arbitration.

249. Courts held by justices of the peace.

### CHAPTER CCXLIII.

#### The Supreme Court.

Sec. 6404. May issue writs of quo warranto.

§ 6404. The supreme court shall have \* \* \* power to issue writs of \* \* \* quo warranto, \* \* \*.

Proceedings in quo warranto. §§ 8635-8662.

### CHAPTER CCXLIV B.

#### State Court of Mediation and Arbitration.

Sec. 653418. Disputes, etc., to be submitted to arbitrators.

653419. Governor to appoint court of arbitration; clerk of.

6534m. Quorum.

6534m1. Disputes to be submitted to court.

6534m2. Decisions, when to be given, etc.

Sec. 6534m3. In case of threatened strikes.  
6534m4. Fees of witnesses; subpoena.  
6534m5. Report of court.  
6534m6. Pay of court and clerk.  
6534m7. Words defined.

§ 653418. Whenever any grievance or dispute of any nature shall arise, between any employer and his employes, it shall be lawful to submit the same in writing to a court of arbitrators for hearing and settlement, in the manner hereinafter provided.

See § 4860, subd. 1, and cross-references.

§ 653419. After the passage of this act the governor may, whenever he shall deem it necessary, with the advice and consent of the senate, appoint a State court of mediation and arbitration to consist of three competent persons who shall hold their terms of office respectively one, two and three years, and upon the expiration of their respective terms the said term of office shall be uniformly for three years. If any vacancy happens by resignation or otherwise he shall, in the same manner, appoint an arbitrator for the residue of the term. If the senate shall not be in session at the time any vacancy shall occur or exist, the governor shall appoint an arbitrator to fill the vacancy, subject to the approval of the senate when convened. Said court shall have a clerk or secretary who shall be appointed by the court to serve three years, whose duty it shall be to keep a full and faithful record of the proceedings of the court and also all documents, and to perform such other duties as the said court may prescribe. He shall have power, under the direction of the court, to issue subpoenas, to administer oaths in all cases before said court, to call for and examine all books, papers and documents, of any parties to the controversy, with the same authority to enforce their production as is possessed by the courts of record or the judges thereof, in this State. Said arbitrators and clerk shall take and subscribe the constitutional oath of office, and be sworn to the due and faithful performance of the duties of their respective offices before entering upon the discharge of the same. An office shall be set apart in the capitol by the person or persons having charge thereof, for the proper and convenient transaction of the business of said court.

§ 6534m. Any two of the arbitrators shall constitute a quorum for the transaction of business, and may hold meetings at any time or place within the State. Examinations or investigations ordered by the court may be held and taken by and before any one of their number, if so directed. But the proceedings and decisions of any single arbitrator shall not be deemed conclusive until approved by the court or a majority thereof. Each arbitrator shall have power to administer oaths.

§ 6534m1. Whenever any grievance or dis-



pute of any nature shall arise between any employer and his employes, it shall be lawful for the parties to submit the same directly to said State court, and shall jointly notify said court or its clerk, in writing, of such grievance or dispute. Whenever such notification to said court or its clerk is given, it shall be the duty of said court to proceed, with as little delay as possible, to the locality of such grievance or dispute, and inquire into the cause or causes of grievance or dispute. The parties to the grievance or dispute shall thereupon submit to said court in writing, succinctly, clearly and in detail, their grievances and complaints, and the cause or causes thereof, and severally agree in writing to submit to the decision of said court as to matters so submitted, and a promise or agreement to continue on in business or at work, without a lock-out or strike, until the decision of said court, provided it shall be rendered within ten days after the completion of the investigation. The court shall thereupon proceed to fully investigate and inquire into the matters in controversy, and to take testimony under oath in relation thereto, and shall have power by its chairman or clerk to administer oaths, to issue subpoenas for the attendance of witnesses, the production of books and papers, to the same extent as such power is possessed by court of record or the judges thereof, in this State.

§ 6534m2. After the matter has been fully heard, the said board, or a majority or its members, shall, within ten days, render a decision thereon in writing, signed by them or a majority of them, stating such details as will clearly show the nature of the decision and the points disposed of by them. The decision shall be in triplicate, one copy of which shall be filed by the clerk of the court in the clerk's office of the county where the controversy arose, and one copy shall be served on each of the parties to the controversy.

§ 6534m3. Whenever strike or lock-out shall occur, or is seriously threatened in any part of the State, and shall come to the knowledge of the court, it shall be its duty, and it is hereby directed to proceed, as soon as practicable, to the locality of such strike or lock-out and put itself in communication with the parties to the controversy, and endeavor by mediation to effect an amicable settlement of such controversy; and if in its judgment it is deemed best, to inquire into the cause or causes of the controversy, and to that end the court is hereby authorized to subpoena witnesses, compel their attendance, and send for persons and papers, in like manner and with the same powers as it is authorized to do by section three\* of this act.

§ 6534m4. The fees of witnesses shall be

one dollar for each day's attendance and seven cents per mile traveled by the nearest route in getting to and returning from the place where attendance is required by the court to be allowed by the board of State auditors upon the certificate of the court. All subpoenas shall be signed by the secretary of the court, and may be served by any person of full age authorized by the court to serve the same.

§ 6534m5. Said court shall make a yearly report to the legislature, and shall include therein such statements, facts and explanations as will disclose the actual working of the court, and such suggestions as to legislation, as may seem to them conducive to harmonizing the relations of, and disputes between employers and the wage earning.

§ 6534m6. Each arbitrator shall be entitled to five dollars per day for actual service performed, payable from the treasury of the State. The clerk or secretary shall be appointed from one of their number, and shall receive an annual salary not to exceed twelve hundred dollars, without per diem, per year, payable in the same manner.

§ 6534m7. Whenever the term "employer" or "employers" is used in this act it shall be held to include "firm," "joint-stock association," "company" or "corporation," as fully as if each of the last-named terms was expressed in each place.

See Const., art. XV, § 11.

## CHAPTER CCXLIX.

### Courts Held by Justices of the Peace.

Sec. 6861. Actions against corporation.

6862. Summons, how served.

6863. Judgment against corporation, no stay of execution.

6964. Cases in which no stay of execution is allowed.

7086. Proceedings against foreign corporations by attachment and garnishment.

7087. Liabilities of garnishees in such cases.

§ 6861. All actions against corporations, except municipal corporations, shall be cognizable before a justice of the peace in like manner and with the like restrictions as the same are or may be by law before a justice of the peace when brought against an individual.

See § 4860, subd. 1, and cross-references.

§ 6862. The first process against a corporation shall be a summons, and shall be served by leaving a copy thereof with the president, cashier or secretary, or other principal officer of such corporation, or by leaving such copy at the banking-house or office of such corporation; and upon return of such service being made, such corporation shall be deemed to be in court, and the like proceed-

\*§ 6534m.



Actions; evidence — Stat., §§ 6863, 6964, 7086, 7087, 7513, 7528, 7545.

ings, as near as may be, shall be thereupon had, as in cases of suits between individuals.

Service of legal notices, etc. § 4161e9, and cross-references.

[Above section applies solely to domestic corporations. *Reath v. W. U. Tel. Co.*, 89 Mich. 22; s. c., 50 N. W. Rep. 817.]

§ 6863. Where judgment shall be rendered against a corporation, no security for a stay of execution shall be entered, except at the option of the plaintiff, and execution may issue forthwith.

See § 4161c7. Certain articles free from seizure, when. § 4161d1. Execution may be adjourned, when. § 4870.

§ 6964. No stay of execution shall be allowed in the following cases except at the option of the plaintiff:

1. In actions against any corporation, except at the option of the plaintiff: \* \* \*

See § 4161d1, and cross-references.

§ 7086. Whenever an action shall be commenced by attachment against a foreign corporation, and proceedings by garnishment shall also be commenced in the same action, if it shall appear on the return of the writ of attachment that a copy thereof, and also copies of all garnishee summons issued in said action, have been personally served on any officer, member, clerk or agent of such foreign corporation within this State, the same proceedings may be thereupon had in said action against said corporation, and in the same manner, as upon the return of a summons personally served in actions against natural persons; and in all cases of proceedings by garnishment against corporations, whether foreign or domestic, service of any process in the manner above provided for in case of foreign corporations, shall have like force and effect as personal service upon natural persons.

See § 8025a. Attachment against foreign corporation. § 8143.

[Above provision is limited in its application to garnishment proceedings in which the original suit is commenced by attachment. *Carpenter Co. v. Trombley*, 101 Mich. 447; s. c., 59 N. W. Rep. 809.]

§ 7087. The rights and liabilities of garnishees in such cases, and the proceedings against them, shall be the same in all respects as is provided by law in other cases of garnishment.

See §§ 8055-8057, 8086-8088.

## TITLE XXX. OF PROCEEDINGS IN PERSONAL ACTIONS.

Ch. 262. Of evidence.  
266. Judgments and executions.

### CHAPTER CCLXII.

#### Of Evidence.

Sec. 7513. Corporators witnesses in certain cases.  
7528. Existence of corporation, how proved.  
7545. Parties not to testify in certain cases

§ 7513. Any member of a corporation aggregate, not named on the record as a party to a suit brought by or against such corporation, not otherwise incompetent, shall be received as a competent witness to testify to any matter against the interest of such corporation.

See § 4860, subd. 1, and cross-references.

§ 7528. In any suit or proceeding, civil or criminal, hereafter instituted in any of the courts of this State, wherein it shall become material or necessary to prove the incorporation of any company or corporation, or the existence of any joint-stock company or association, whether the same be a foreign or domestic corporation, company, or association, evidence that such corporation, company, or association is doing business under a certain name shall be prima facie proof of its due incorporation or existence pursuant to law, and of its name.

See § 4860, subd. 1, and cross-references, and note to § 8140.

[Corporate existence, how proved. *Way v. Billings*, 2 Mich. 397; *Swartwout v. I. R. Co.*, 24 id. 394; *Building Co. v. Thompson*, 32 id. 294; *Cahill v. Ins. Co.*, 2 Doug. 124.]

§ 7545. (As amended June 4, 1885.) \* \* \*  
When any suit or proceeding is prosecuted or defended by any corporation, the opposite party, if examined as a witness in his own behalf, shall not be admitted to testify at all in relation to matters which, if true, must have been equally within the knowledge of a deceased officer or agent of the corporation, and not within the knowledge of any surviving officer or agent of the corporation, nor when any suit or proceeding is prosecuted or defended by the heirs, assigns, devisees, legatees, or personal representatives of a deceased person against a corporation or its assigns, shall any person who is, or has been, an officer or agent of any such corporation be allowed to testify at all in relation to matters which, if true, must have been equally within the knowledge of such deceased person: Provided, That whenever the words "the opposite party" occur in this section it shall be deemed to include the

## Execution against stock; attachment — Stat., §§ 7697-7702, 8025a.

assignors or assignees of the claim or any part thereof in controversy.

See § 4860, subd. 1, and cross-references.

## CHAPTER CCLXVI.

## Judgments and Executions.

Sec. 7697. Interest of stockholder in corporation may be taken in execution.

7698. Copy of execution to be left with whom.

7699. Officer of company must give certificate.

7700. Copy of execution to be left, etc.

7701. Purchaser entitled to dividend, when.

7702. How executions levied upon corporate property.

§ 7697. (As amended May 25, 1893.) Any share or interest of any stockholder in any bank, insurance company or any other joint-stock corporation that is or may be incorporated under the authority of, or authorized to be created by any law of this State, may be attached or taken in execution and sold in the following manner:

Certain articles free from seizure, when.  
§ 4161d1.

[Shares of stock cannot be subjected to legal process without specific legislation prescribing in substance all necessary procedure. *Van Norman v. Jackson*, 45 Mich. 204; s. c., 7 N. W. Rep. 796.

As to requirements of a valid levy on and sale of shares of stock owned by individual shareholders, see *Blair v. Compton*, 33 Mich. 414. A creditor of the transferor of stock buying the same at execution sale with notice of the transfer can get no better title than his debtor had. *Newberry v. Mfg. Co.*, 17 Mich. 141.

A person proceeding under the statute to levy upon stock and sell it upon execution is bound within a reasonable time to have his title perfected by a transfer on company books. *Id.*

Executions and attachments cannot be levied on shares of stock if the debtor is not himself the legal possessor of the interest, or where he has only an equitable right or has regularly assigned his interest. *Van Norman v. Jackson*, *supra*.

An attachment cannot be levied on corporate stock previously assigned by the defendant to his wife. *Id.*]

§ 7698. (As amended May 25, 1893.) The officer shall leave a copy of the attachment or execution certified by him with the clerk, treasurer, cashier, or agent of the corporation if there be any such officer, and if not then with any officer or person who has, at the time, the custody of the books and papers of the corporation within this State, and the share or interest shall be considered seized on such attachment or execution when such copy is left.

See § 4161c7, and note to § 7697.

§ 7699. (As amended May 25, 1893.) The officer of the company who is appointed to keep a record or account of the shares or interest of the stockholders therein or in whose office there is required to be kept any list or statement showing the stockholders

of such corporation and the number of shares held by each, or their interest therein, shall upon exhibiting to him the attachment or execution be bound to give the officer a certificate of the number of shares or amount of the interest held by the defendant named in such attachment or the judgment debtor.

Secretary and treasurer to keep books. § 4161a5. Court may enter order for names on books, when. § 4888.

§ 7700. A copy of the execution and the return thereon, certified by the officer executing the same, shall, within fourteen days after the sale, be left with the officer of the company whose duty it may be to keep a record of the transfer of shares; and the purchaser shall thereupon be entitled to a certificate or certificates of the shares bought by him, upon paying the fees therefor, and for recording the transfers.

§ 7701. If the shares or interest of the judgment debtor shall have been attached in the suit in which the execution issued, the purchaser shall be entitled to all the dividends which shall have accrued after the levying of the attachment.

Rights of purchasers. § 4885, and cross-references.

§ 7702. Executions against corporations, when levied upon any corporate property, shall be levied in the same manner as other executions are levied, except in cases otherwise provided by law.

See § 4161d1, and cross-references.

## TITLE XXXII. PROCEEDINGS IN SPECIAL CASES.

Ch. 275. Proceedings by attachment.

276. Proceedings against garnishees in justices' courts.

277. Proceedings against garnishee in courts of record.

280. Proceedings by and against corporations in courts of law.

281. Proceedings against corporation in chancery.

282. The voluntary dissolution of corporations and of the abatement of suits by and against them.

## CHAPTER CCLXXV.

## Proceedings by Attachment.

Sec. 8025a. Actions of tort against non-residents commenced by attachment.

8025b. Affidavit.

8025c. Order to be indorsed, etc.; release of property.

8025d. Proceedings in case of.

§ 8025a. (As amended May 20, 1893.) Actions of tort may be commenced in courts of record within this State by writ of attachment against non-residents, including non-resident or foreign corporations when the cause of action has arisen or may here-

after arise in this State or where the cause of action has accrued or shall hereafter accrue during the time that the plaintiff in such action shall have been a bona fide resident of this State. Such writ shall be in the same form as in attachment suits on contract and the proceeding shall be the same as in actions of contract commenced by attachment except as herein provided to the contrary.

See § 4860, subd. 1, and cross-references. Attachment in courts of justices of the peace. § 7086.

[Shares of stock in which debtor has only a beneficial interest, and legal title to which is vested in the third person as trustee, are not subject to attachment. *Gypsum, etc., Co. v. Circuit Judge*, 97 Mich. 631; s. c., 57 N. W. Rep. 191.]

§ 8025b. (As amended May 20, 1893.) An affidavit shall be annexed to said writ before its execution and before the order prescribing the amount of property that may be attached as provided by section three of this act which shall be made by the plaintiff in such action or by some other person by him authorized so to do who shall have a knowledge of the facts stated therein and which affidavit shall fully state and describe the cause of action, also that the defendant is a non-resident or foreign corporation and that the cause of action arose in this State or accrued to the plaintiff at a time when such plaintiff was a bona fide resident of this State and that the defendant is carrying on business in or is the owner of property within this State at the time of the making of such affidavit and no further proof or other affidavit shall be required.

§ 8025c. Before any property shall be attached on said writ, an order must be indorsed thereon by a circuit court commissioner of the county where the suit is commenced, or by any circuit or supreme judge, prescribing the amount of property that may be attached, which order shall be substantially as follows: "Let the property of the defendant in the within writ be attached to the amount of ..... dollars." Such order shall be signed by the officer allowing the same. Such property may be released in the manner prescribed in the general law relating to attachment suits on contract.

§ 8025d. The same proceedings shall be had in serving and executing such writ of attachment as is now had in attachment proceedings in assumpsit, and service upon defendant shall be in all respects as prescribed in chapter two hundred and one of the compiled laws of eighteen hundred and seventy-one, and the acts amendatory thereto. But if the defendant has a manager, agent, superintendent or other principal representative within the county where the suit is brought, there shall be served upon such manager, agent, superintendent, or other principal representative, the same

papers that are now required to be served upon defendants in attachment suits in addition thereto.

## CHAPTER CCLXXVI.

### Proceedings Against Garnishees in Justices' Courts.

- Sec. 8055. Corporations liable as garnishees; service of summons; answer; judgment.  
 8056. Form of summons.  
 8057. Process, etc., against corporation, how served.  
 8057a. Proceedings.  
 8057b. Order of the court.

§ 8055. (As amended June 30, 1891.) Corporations, whether foreign or domestic, other than municipal, may be proceeded against as garnishees, in the same manner and with like effect, as individuals under the provisions of this act and the rules of law regulating proceedings against corporations, and the summons against the garnishee, in such case, may be served on the president, cashier, secretary, treasurer, general or special agent, superintendent, chief clerk or other principal officer of such corporation, and it shall be the duty of such officer so served, or of the proper officer of such corporation having knowledge of the facts, to appear before the justice on the return day of such summons and answer thereto; or, in case such corporation has its business office in any other township than that in which said justice holds his office, to answer at his option, in writing, verified by his oath, before some person authorized to administer oaths, and transmit the same by mail or otherwise, to the justice issuing said summons, on or before the return day thereof, which shall be deemed a sufficient compliance with such summons; if such garnishee shall neglect or refuse to appear and answer or to transmit its answer in writing, as above provided, on the return day of said summons, if the same shall have been duly served upon such garnishee and its fees paid or tendered, the justice shall continue the cause not less than six nor more than twelve days, and without further showing than that the summons has been duly served and the fees paid or tendered, issue a new summons against the garnishee defendant in continuation of the cause, returnable on the day to which said cause may have been continued, which shall be served as in the first instance, and at least six days prior to the return day thereof, but in such case the garnishee defendant shall not be entitled to any fees; and unless such corporation shall appear and answer, or transmit its answer in writing in obedience to said second summons it shall be held to be indebted to the defendant in the original suit to the amount of any judgment that may be made against said defendant in such suit, and if judgment shall have been rendered against the defendant in said original suit at the time



## Garnishments — Stat., §§ 8056-8057a.

of the default of such garnishee defendant, as aforesaid, said justice shall immediately enter judgment against said garnishee defendant for the amount of the judgment against the defendant in the original suit and in favor of the plaintiff; but if at the time of such default as aforesaid judgment has not been rendered against the defendant in the original suit, then said justice shall still further continue said cause until the determination of such original cause when, if judgment is rendered against the defendant in such original suit, the justice shall immediately render judgment against such corporation, as above provided. Such corporation, or the plaintiff in said suit, may appeal from any judgment rendered under this section to the circuit court of the proper county, in the same manner as appeals may be taken from any other judgment of a justice of the peace, where the liability of such corporation may be fully inquired into: Provided, That when such corporation shall wish to appeal, in cases where it has not answered as garnishee, it shall, in addition to the other requirements of law, file with the justice a full and complete answer, in writing, as such garnishee, verified by the oath of one of its officers having knowledge of the facts; and thereupon said justice shall, within the time required for making such return of such appeal, at the option of the plaintiff, either make such return or set aside the judgment rendered against such corporation, by entry thereof upon his docket and across the face of such judgment, in which event such corporation, if it has not already paid all costs in such suit, shall be liable for the same.

See § 4860, subd. 1, and cross-references. Garnishment in justices' court. § 7087.

[Summons requiring garnished corporation to show cause, etc., in justice's court must be served upon a "principal officer." *Bank v. Burch*, 76 Mich. 608; s. c., 43 N. W. Rep. 453.

A bookkeeper is not an officer or agent within meaning of above section. *Pettit v. Blooming Co.*, 74 Mich. 214; s. c., 41 N. W. Rep. 900. An attorney appointed by a foreign corporation to receive service of process in an action upon any liability or indebtedness incurred by the company cannot be served with notice of garnishment proceedings. *Moore v. Circuit Judge*, 55 Mich. 84; s. c., 20 N. W. Rep. 801.

The general or special agent of a foreign insurance company is the proper person to be served with summons in garnishment against it, and to make answer. *Lorman v. Ins. Co.*, 33 Mich. 65.

A return to a garnishee summons issued against a foreign corporation that an officer had served same by delivering to R., agent of said corporation, having charge of its affairs within county where suit was brought, a copy of said summons, is sufficient to confer jurisdiction under above section. *Carpenter Co. v. Trombley*, 101 Mich. 448; s. c., 59 N. W. Rep. 809.

A summons in garnishment may be served on a foreign insurance company by substituted service on the insurance commissioner. *Ins. Co. v. Circuit Judge*, 63 N. W. Rep. 531.

Holder of note of a corporation, made for an indebtedness existing prior to appropriation of corporate funds to payment of individual debt

of officer of the corporation, held a creditor within the garnishee statute. *Ferry v. Home Sav. Bank*, 72 N. W. Rep. 181.

Corporate funds paid out on a debt of an officer of the corporation can be reached by the creditors of the corporation by garnishment. *Id.*

§ 8056. The summons issued in pursuance of section one of this act\* may be substantially in the form of the ordinary justice's summons, and need not recite either the commencement of suit by the plaintiff against the principal defendant, or any of the allegations contained in the affidavit for garnishment theretofore filed, but shall contain a command to summon such garnishee to answer in the suit in substantially the following form: "To answer, under oath, all questions put to him touching his indebtedness to A. B., principal defendant at the suit of C. D., plaintiff herein, and the property, money and effects of the said A. B. in his possession within his knowledge, or under his control, according to the allegations contained in the affidavit of said C. D. (or E. F., agent of said C. D.), duly made and filed in this suit."

§ 8057. Any process, notice, or writing issued by a justice of the peace against any corporation, may be served in the manner prescribed by law for serving process on the corporation against which the process, notice or writing, is issued.

See § 4161c9, and cross-references.

§ 8057a. (Enacted June 10, 1885.) When the examination or disclosure of the garnishee shall disclose that any other person or corporation than the defendant claims in whole or in part the money, property, or indebtedness due by him, or in his possession, and the name and residence of such claimant, the garnishee may deliver such money, property, or indebtedness to the justice, who shall cause to be served on such claimant a written notice to appear in said court and maintain his said claim; such notice shall contain the name of the parties to the principal and garnishee suits, the name and place of residence of the justice, the return day or adjourned day of the garnishee suit; in other respects it shall be served in the same manner as summonses from justices' courts; for the purpose of giving an opportunity of serving the notice above provided, it shall be the duty of the justice, on the return day of the garnishment suit, if requested by the garnishee, to adjourn such suit not less than ten nor more than thirty days. After the service of such notice and the payment or delivery to the justice of the money, property, or indebtedness, as above provided the garnishee shall be discharged from all liability to any person in respect to the money or property so paid

\*Section reciting when garnishee process may issue.

or delivered; and the proof of the service of such notice filed in the suit, and the certificate or docket entry made by the justice of such payment or delivery, shall be prima facie evidence of the facts stated therein. The claimant shall appear in the suit on the return or adjourned day named in the notice served upon him as aforesaid, and in default thereof judgment shall be rendered against him in respect to his claim. The defendant or defendants so notified shall be considered as defendants in the place and stead of the garnishee, and an issue may be formed between the plaintiff and such defendants in the same manner as provided in section ten of act number one hundred and thirty-seven of the session laws of eighteen hundred and forty-nine, being section eight thousand and forty of Howell's Annotated Statutes of eighteen hundred and eighty-two; the issue may be tried by the justice or by a jury, as in other cases, and such judgment shall be rendered between the parties as shall be just, and such substituted defendant or claimant shall have the same right to appeal as the original garnishee: Provided, That this section shall not be operative when the answer of the garnishee shall disclose that such claimant does not reside in the county where such disclosure is made, or in any adjoining county; nor in case such claimant is a corporation and its principal place of business is not in the same or any adjoining county.

See § 8087.

§ 8057b. (Enacted June 30, 1891.) In all cases where the defendant prevails or takes an appeal in the principal suit, the court shall make an order releasing said moneys so garnished. Said order shall be directed to the garnishee defendant and shall be delivered to the principal defendant upon request of the defendant. Said order shall recite the reason for releasing said garnishee defendant, and said garnishee defendant shall then and there be released from all liability.

#### CHAPTER CCLXXVII.

#### Proceedings against Garnishee in Courts of Record.

Sec. 8086. Garnishment of corporations.  
8087. Proceedings against foreign corporations.  
8088. Same.

§ 8086. (As amended July 5, 1889.) Any corporation, domestic or foreign, other than municipal, may be garnished under this act. If domestic the writ of garnishment may be served upon the president, secretary, cashier or treasurer, superintendent or general agent, or such other officer as the corporation may appoint or the court direct; and the officer served and such other officer as the court or commissioner may order by rule or citation, as hereinbefore provided for,

shall make disclosure and the same shall be considered the answer of the corporation. If a foreign corporation, the writ of garnishment may be served upon any officer or agent of the corporation, upon the conductor of any railroad train, or upon the master of any vessel belonging to and in service of the corporation found within this State, whether said officer or agent be in this State upon the business of said corporation or not, and said officer or agent shall make disclosure and the same shall be considered the answer of the corporation; Provided, That in all such cases of foreign corporations if said officer or agent shall neglect or refuse to file disclosure to said writ, as hereinbefore in this chapter provided, the default of said foreign corporation may be entered as in other cases, and upon the entry of judgment against the principal defendant, judgment may be entered in said garnishee proceedings against said foreign corporation for the amount thereof, including costs: Provided further, No judgment on default shall be rendered against said foreign corporation until the expiration of sixty days after the entry of judgment against the principal defendant, and the plaintiff shall within twenty days after judgment against the principal defendant, serve notice by mail on the foreign corporation at its home office that judgment [had] has been obtained against the principal defendant, and that at the expiration of sixty days from the date of said judgment application would be made for judgment against it, as hereinbefore provided. Said notice to be substantially as follows:

In the Circuit Court for the County

of .....

..... Plaintiff.

vs.

..... Defendant.

..... Gar. Def't.

To said Garnishee Defendant:

Take notice that on the ..... day of ....., A. D., ...., judgment for the sum of ..... dollars, including costs, was entered in said court against the above-named principal defendant, and at the expiration of sixty days from the entry of said judgment, application will be made to said court for the entry of judgment against you as garnishee defendant in said cause.

Yours, etc.,

.....

Plaintiff's Attorneys.

(Approved July 5, 1889.)

See § 4860, subd. 1, and cross-references. Gar-



Garnishments; actions — Stat., §§ 8087, 8088, 8135–8137.

nishment proceedings in courts of justices of the peace. § 7087.

[The “general or special agent” of a corporation upon whom a summons in garnishment may be served is an agent having a general or special controlling authority, either generally or in respect to some particular department of business. *L. S. & M. S. R. Co. v. Hunt*, 39 Mich. 469.

Above section does not conflict with fourteenth amendment of United States Constitution. *Iron Co. v. Circuit Judge*, 88 Mich. 464; s. c., 50 N. W. Rep. 389.

Under above section, service of garnishment process against a foreign corporation may be made upon any officer or agent found in Michigan, whether here upon corporate business or not. *Bank v. Burch*, 80 Mich. 242; s. c., 45 N. W. Rep. 93. As to the service upon foreign insurance companies, see *Hebel v. Ins. Co.*, 33 Mich. 400; see, also, *Hewitt v. Lumber Co.*, 38 id. 701.]

§ 8087. If the plaintiff, in addition to the allegations hereinbefore required to be contained in the affidavit for the writ of garnishment, shall set forth in such affidavit that the principal defendant is a non-resident, or a foreign corporation created in any jurisdiction (naming it), the principal writ (or declaration), and affidavit may be filed of the day of issue, and the writ of garnishment may be served as in ordinary cases; and within sixty days after such service, the plaintiff shall cause to be delivered to such non-resident defendant, or to the president, secretary, cashier or treasurer of such foreign corporation, resident out of this State, or upon any officer, clerk or agent, residing or to be found within this State, a true copy of the principal writ (or declaration), affidavit and writ of garnishment, with return of service thereon, and with a written or printed notice attached, signed by the plaintiff, or his attorney, and stating that said non-resident defendant or foreign corporation is notified to appear and defend within thirty days after such service, or default will be entered, and judgment taken; and upon filing an affidavit of such service, further proceedings to judgment may be had, as in ordinary personal actions.

See § 8055a.

[Failure to describe defendant as a foreign corporation in a summons issued under above section will not deprive the court of jurisdiction. *Williams v. Stock Board*, 99 Mich. 80; s. c., 57 N. W. Rep. 1089.]

§ 8088. Whenever the action shall be commenced by writ of attachment against a non-resident defendant or foreign corporation, and a writ of garnishment shall issue, the same proceedings shall be had in respect to personal service upon the principal defendant, as are specified in the previous section.

## CHAPTER CCLXXX.

### Proceedings by and against Corporations in Courts of Law.

Sec. 8135. Foreign corporations may sue in this State on giving security for costs.

8136. Exceptions.

8137. Suits against corporations, how commenced.

8138. Proceedings on return of process.

8139. Measure of damages in certain cases.

8140. Proof of existence of domestic corporation.

8141. Reciting acts of incorporation.

8142. Misnomer of corporation.

8143. Attachment against foreign corporation.

8144. Double costs in cases against foreign corporation.

8145. Where suits against foreign corporations may be commenced.

8146. When cause of action accrued prior to passage of this act.

8147. Service of process on railroad company.

§ 8135. A foreign corporation created by the laws of any other State or country, may prosecute in the courts of this State, in the same manner as corporations created under the laws of this State, upon giving security for the payment of the costs of suit, in the same manner that non-residents are required by law to do.

See § 4860, subd. 1, and cross-references. Service of summons on foreign corporation. § 4161d6, and note.

[Foreign corporations may sue each other in Michigan if both are doing business within the State and the cause of action accrued there. *Emerson v. Harvesting Co.*, 51 Mich. 5; s. c., 16 N. W. Rep. 182; see *Thompson v. Waters*, 25 Mich. 214, 235.]

§ 8136. But when, by the laws of this State, any act is forbidden to be done by any corporation, or by any association of individuals, without express authority by law, and such act shall have been done by a foreign corporation, it shall not be authorized to maintain any action founded upon such act, or upon any liability or obligation, express or implied, arising out of, or made or entered into in consideration of such act.

[A foreign private corporation cannot establish a liability upon any act done by it as a consideration for a benefit to it, if it is an act which domestic corporations cannot do without authority of law. *Chapman v. Colby*, 47 Mich. 46; s. c., 10 N. W. Rep. 74.

Section 8136 applies only to acts forbidden to any corporation, and puts foreign corporations upon the footing on which domestic corporations are put by those State laws only which apply generally to all corporations in the State; and section 4866 only confirms such powers as any corporation then had or might thereafter have “by law;” it is merely declaratory of the corporation’s common-law right to hold and convey lands wherever that right was not restrained by the legislature. *Thompson v. Waters*, 25 Mich. 214.]

§ 8137. (As amended June 24, 1887.) Suits against corporations may be commenced by writs of summons or by declaration, in the



same manner that personal actions may be commenced against individuals, and such writ or a copy of such declaration in any suit against a corporation shall be served on the presiding officer, cashier, secretary, or treasurer, or any other officer or agent of such corporation, or by leaving the same at the banking-house or office of such corporation, and may be served in any county in the State where the plaintiff resides: Provided, That in any county of the State where said plaintiff may reside, other than the one wherein the principal office of such corporation may be located, a writ of attachment may be the first process against such corporation, which shall be served in the same manner as other writs of attachment issuing out of the court wherein suit is commenced, and upon the return of such service being made such corporation shall be deemed to be in court, and the like proceedings, as near as may be, shall be thereupon had as in cases of suits against individuals. All acts or parts of acts inconsistent herewith are hereby repealed: Provided further, That the attachment proceedings as herein provided for shall not apply to railroad companies or corporations whose right of way, or any part of the same, is within the boundaries of the State of Michigan, nor to navigation companies or corporations.

See § 4161c9, and cross-references.

[Above section contemplates some diligence in searching for persons to be served, after, and not before, suit is brought. *Merrill v. Montgomery*, 25 Mich. 73. Where the affidavit of service upon an officer, as representing a corporation, simply says that the person named was formerly the acting president, "and the only president thereof, to the knowledge or belief of this deponent," and it does not appear what means of knowledge the deponent had, there is no sufficient proof of regular service. *Id.* In an action against a private domestic corporation there can be no substituted service under section 8137 for want of finding the officers designated by statute, except in the county where the corporation's business office is located. *Ins. Co. v. Circuit Judge*, 23 Mich. 492. An action cannot be brought against a domestic corporation in a county other than that of its principal office, and substituted service then be made under section 8137, if its officers are not found in the county where suit is brought. *Id.*

Substituted service may be made upon corporations not acting, as well as upon those acting. The inability to find the last officers of corporations that have ceased to do business authorizes the same proceedings to obtain service as in case of inability to find the proper actual officers in active corporations. *Merrill v. Montgomery*, 25 Mich. 73.

Process may be served upon proper officers of a corporation in county where plaintiff resides, although its business office is in another county. *Potter v. Mfg. Co.*, 79 Mich. 207; s. c., 44 N. W. Rep. 595. Above section is not designed to reach foreign corporations. *Reath v. W. U. Tel. Co.*, 89 Mich. 22; s. c., 50 N. W. Rep. 817; *Watson v. Judge*, 24 Mich. 38.

A writ of attachment may issue against a domestic corporation, in the county where its home office is located, in favor of a creditor who resides in that county, in like cases as in suits between individuals. *Dairy Co. v. Runnels*, 96 Mich. 109; s. c., 55 N. W. Rep. 617. Above section gives a remedy by attachment against do-

mestic corporations, other than railroad and navigation companies, in all cases where plaintiff resides in the county other than that in which the home office is located, in case property can be found liable to attachment there. *Id.*]

§ 8138. When such process, or a copy of such declaration with a notice of rule to plead, shall have been returned duly served, the appearance of the corporation shall be entered, and the plaintiff may proceed thereupon in such suit, in the same manner as in personal actions against natural persons. And when it may be necessary to institute suits against any corporation which may have ceased to do business, or to keep up its organization by the appointment of officers or otherwise, it shall be competent to serve any writ, declaration or other process in such suit, on either of the persons who may have been the last presiding officer, president, cashier, secretary or treasurer thereof; and such service shall be as effectual to all intents and purposes as if made on such corporation; and in every such case where, by the existing provisions of law, the property of individual members of any such corporation vested in its corporate funds, or the shares or stock of any individual member in such corporation, are subject to be levied upon by virtue of any execution, attachment or other process, for the payment of his individual debts, such levy may be made by leaving with any of the persons aforesaid, or with the officer or person having the custody of the books of such corporation, an attested copy of such execution, attachment or process; and such property, funds or stock may be sold as is now provided by law.

§ 8139. When judgment shall be rendered against any incorporated bank, for the amount of any bills or other evidences of debt, payable absolutely, the payment of which shall have been refused by such bank, and no measure of damages shall be specified in the act incorporating such bank, the plaintiff shall recover interest on such amount from the time of such refusal, at the rate of ten per cent. a year, instead of the rate established by law.

See § 4860, subd. 1, and cross-references.

§ 8140. In suits brought by a corporation created by or under any statute of this State, it shall not be necessary to prove on the trial of the cause the existence of such corporation, unless the defendant shall have pleaded in abatement, or given notice under his plea to the action, that the plaintiffs are not a corporation, and annex thereto an affidavit of the truth of such plea or notice.

See § 4860, subd. 1, and cross-references. Organization of de facto corporations legalized. § 4161d4. Corporate existence, how proved. § 7528.

[In suit by a corporation, the general allegation that it is a corporation under the laws of the

## Actions by and against corporations — Stat., §§ S141-S145.

State is sufficient averment of corporate existence. *Palmiter v. Lumber Co.*, 31 Mich. 183.

Corporate existence may be proved by production of charter and evidence of user under it. *Way v. Billings*, 2 Mich. 397; *Swartwout v. R. R. Co.*, 24 id. 389; *Cahill v. Ins. Co.*, 2 Doug. 124.

At common law, on plea of the general issue in an action by a corporation plaintiff must prove its corporate existence. *Bank v. Bank*, 1 Mich. 457; *Owen v. Bank*, 2 id. 134.

Testimony from information derived by the witnesses from plaintiffs in doing business for them, and from an examination of what purported to be their articles of association, that they are a corporation under laws of another State, warrants a finding of corporate existence. *Locke v. Silk Co.*, 37 Mich. 479.

Notwithstanding plea of null tiel corporation, plaintiff may make a prima facie case by showing that it has been doing business as a corporation under the name assumed by it, which, in absence of other testimony, conclusively establishes the fact of due incorporation. *Road Co. v. Paas*, 95 Mich. 372; s. c., 54 N. W. Rep. 907.

Plea of the general issue in justices' courts in a suit begun by a summons to answer "the Wilson Sewing Company" is sufficient averment that plaintiff is a corporation. *Sewing Mach. Co. v. Spears*, 50 Mich. 534; s. c., 15 N. W. Rep. 894.

Failure to prove corporate character may be obviated by proof of dealings which recognize it, but such proof is insufficient where question is as to existence of powers and privileges not necessarily implied by corporate existence, but depend on the franchises actually conferred. *Chapman v. Colby*, 47 Mich. 46; s. c., 10 N. W. Rep. 74.

Persons dealing with a body professing to be a corporation cannot question its corporate existence for the purpose of charging its members individually as partners. *Bank v. Stone*, 38 Mich. 779; *Eaton v. Walker*, 76 id. 579; s. c., 43 N. W. Rep. 638; *R. R. Co. v. Miller*, 91 Mich. 166; s. c., 51 N. W. Rep. 981.

In an action upon a subscription to stock, the regularity of organization of the corporation cannot be disputed. *Parker v. R. R. Co.*, 33 Mich. 23; *Chubb v. Upton*, 95 U. S. 665.

A railroad company having completed its road, and being engaged in operating it, a private individual sued by it cannot contest its legal organization. *Swartwout v. Air Line Co.*, 24 Mich. 389; *Wilcox v. Toledo, etc. Co.*, 43 id. 584; s. c., 5 N. W. Rep. 1003. Legal organization can be attacked only by the State in a direct proceeding. *Toledo, etc. Co. v. Johnson*, 55 Mich. 456; s. c., 21 N. W. Rep. 888; *Potter v. R. R. Co.*, 83 Mich. 285; s. c., 47 N. W. Rep. 217.

A cause of forfeiture of corporate rights cannot be taken advantage of collaterally. *Cahill v. Ins. Co.*, 2 Doug. 124.

But a grantee of the stock and bonds of a corporation, when sued upon claims against it which are preferred by its organizer's assignee, and of which he had no notice, is not estopped from showing that it was organized in fraud of the statute for the organization of such company. *Ry. Co. v. Miller*, 91 Mich. 166; s. c., 51 N. W. Rep. 981.

A creditor who deals with a recognized corporation cannot attack its legal existence. *American, etc. Co. v. Bulkley*, 65 N. W. Rep. 251.

One who seeks to foreclose a mortgage of a corporation thereby affirms its corporate existence. *Gow v. Lumber Co.*, 66 N. W. Rep. 676.

Where taxes are assessed against a corporation and it pays them under protest, and sues to recover the money, the defendant cannot be heard to say in said suit that plaintiff is not legally incorporated. *Water Works v. Frenchtown*, 98 Mich. 432; s. c., 57 N. W. Rep. 268.

In a suit to recover statutory penalty for forcibly passing a toll-gate, the corporate existence of plaintiff cannot be questioned. *Road Co. v. Paas*, 95 Mich. 372; s. c., 54 N. W. Rep. 907.]

§ S141. In actions by or against any corporation created by or under any law of this State, it shall not be necessary to recite the act or acts of incorporation, or the proceed-

ings by which such corporation was created, or to set forth the substance thereof, but the same may be pleaded by reciting the title of such act, and the date of its approval.

See § 4860, subd. 1, and cross-references.

§ S142. In suits or proceedings by or against any corporation, a mistake in the naming of such corporation shall be pleaded in abatement; and if not so pleaded, shall be deemed to have been waived.

See § 4860, subd. 1, and cross-references.

[See *Building Co. v. Thompson*, 32 Mich. 293; *Johr v. Supervisors*, 33 id. 532; *R. R. Co. v. Southwick*, 30 id. 446.]

§ S143. In suits commenced by attachment in favor of a resident of this State, against any corporation created by or under the laws of any other State, government or country, if a copy of such attachment, and of the inventory of property attached, shall have been personally served on any officer, member, clerk or agent of such corporation within this State, the same proceedings shall be thereupon had, with the like effect, as in case of an attachment against a natural person, which shall have been returned served in like manner upon the defendant.

See § 7086, and cross-references.

§ S144. If it shall appear to the court that any such suit against a foreign corporation was brought vexatiously and without just cause, they shall award double costs against the plaintiff, and such plaintiff shall be liable to the defendants for all damages which they may sustain by such proceedings.

See § 4860, subd. 1, and cross-references.

§ S145. (As amended April 4, 1895.) Suits may be commenced at law or in equity in the circuit court for any county of this State where the plaintiff resides or service of process may be had and suits at law, before justices of the peace in such county; and in cases where the plaintiff is a non-resident in any county of the State, against any corporation not organized under the laws of this State in all cases where the cause of action accrues within the State of Michigan, by service of a summons, declaration or chancery subpoena within the State of Michigan, upon any officer or agent of the corporation, or upon the conductor of any railroad train, or upon the master of any vessel belonging to or in the service of the corporation against which the cause of action has accrued: Provided, That in all cases, except before justices of the peace, no judgment shall be rendered for sixty days after the commencement of suit, and the plaintiff shall, within thirty days after the commencement of suit, send notice by



registered letter to the corporation defendant at its home office.

See § 4860, subd. 1, and cross-references. Service of summons on foreign corporation. § 4161d6, and note.

[The officer or agent of a foreign corporation served within this State under above section need not be here on official business for his corporation, or be specially authorized for such service. *Iron Co. v. Const. Co.*, 61 Mich. 226; s. c., 28 N. W. Rep. 77.

Above section has no application to a suit for enforcement of a lien for labor performed for a mining corporation in the Upper Peninsula, where no service is had upon any officer or agent of the corporation as provided by the section. *McLaren v. Byrnes*, 80 Mich. 275; s. c., 45 N. W. Rep. 143.

Above section does not provide for service of garnishment process against foreign corporations. *Bridge Works v. Circuit Judge*, 73 Mich. 155; s. c., 41 N. W. Rep. 215.]

§ 8146. When the cause of action has accrued prior to the passage of this act, suit may be brought as provided in the first section of this act.\* Provided. That the cause of action at the time such suit is brought would not have been barred by the statute of limitations, had such corporation been organized within this State.

§ 8147. Whenever, in any suit or proceeding either in law or equity, it shall become necessary to serve any process, notice, or writing upon any railroad company in this State, it shall be sufficient to serve the same upon any station agent, or ticket agent at any station or depot along the line, or at the end of the railroad of such company, and such service shall be deemed as good and effectual as if made on the officers, stockholders, or members, or either of them of such company.

See § 4161c9, and cross-references.

[Service upon a "commercial agent" of a railroad company is bad. *Detroit v. Ry. Co.*, 63 Mich. 712; s. c., 30 N. W. Rep. 321. Service on the attorney of a railroad company in proceedings to open a street across its premises is not authorized. *R. R. Co. v. Detroit*, 49 Mich. 47; s. c., 12 N. W. Rep. 904.

Justices' process against railroad companies may be served upon conductors, etc. *Fowler v. Detroit, etc., Co.*, 7 Mich. 79.

In an action against a railroad company a return stating that "the within summons" was served "on the defendant by handing a copy to the station agent" was sustained; it implies that station agent was defendant's agent. *Talbot v. R. R. Co.*, 82 Mich. 66; s. c., 45 N. W. Rep. 1113. But an affidavit that service was made on a freight agent, without giving his name or showing that he was in charge of the freight office, is bad. *Truax v. Sterling*, 74 Mich. 180; s. c., 41 N. W. Rep. 885.]

## CHAPTER CCLXXXI.

### Proceedings against Corporations in Chancery.

Sec. 8148. Injunctions against corporations in certain cases.

8149. Issuing and continuance of injunction.  
8150. Jurisdiction of courts over corporate officers.

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8152. Jurisdiction, how exercised.  
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8172. Stay of proceedings at law.  
8173. Certain corporations excepted.

§ 8148. Upon a bill being filed under the direction of the attorney-general, in any court having equity jurisdiction, the court shall have power to restrain by injunction, any corporation from assuming or exercising any franchise, liberty or privilege, or transacting any business not authorized by the charter of such corporation; and in the same manner to restrain any individuals from exercising any corporate rights, privileges or franchises, not granted to them by any laws of this State.

See § 4860, subd. 1, and cross-references. Stay of proceedings at law. § 8172.

[An act of incorporation being a contract between the State and the corporation, dissolution can be effected only by assent of both parties or by judgment of a court of competent jurisdiction. *Town v. Bank*, 2 Doug. 530. A legislative act accepting surrender of franchises, or an act, if accepted, repealing the charter, would operate as a dissolution. Id.]

The statutes providing for proceedings in chancery against corporations and for the voluntary dissolution of corporations (§§ 8148 et seq.) are not in the nature of statutes of bankruptcy applicable to corporations. Id.]

The primary object of proceedings in chancery against falling corporations is not to dissolve the corporation, but to protect creditors. Dissolution of the corporation is merely incidental. *Pay v. Bank*, Harr. 194. Jurisdiction of chancery over corporate bodies to restrain their operations, or wind up their concerns, is based upon and controlled by the statutes.

There is such jurisdiction under general equity power. *Atty.-Gen. v. Bank*, Harr. 315; *Stamm v. Northwestern Assn.*, 65 Mich. 317; s. c., 32 N. W. Rep. 710.

The difference between the adverse and the voluntary proceedings under chapters 281 and 282 explained. *Cady v. Mfg. Co.*, 48 Mich. 133; s. c., 11 N. W. Rep. 839.

The management of corporate affairs cannot be taken from directors or their managing officers, except under proceedings to wind up the corporation, under this chapter, or under chapter 282. *Ry. Co. v. Judge*, 31 Mich. 456.]

§ 8149. Such injunction may be issued before the coming in of the answer, upon satisfactory proof that the defendants complained of have usurped, exercised or



## Visitorial powers; sequestration — Stat., §§ S150-S153.

claimed, any franchise, privilege, liberty or corporate right not granted to them, and after the coming in of the answer, such injunction may be continued until judgment at law shall have been had.

§ S150. The circuit court within the proper county shall have jurisdiction over directors, managers, trustees, and other officers of corporations, and over any persons who may have held such offices in any corporation: Provided, That proceedings are commenced within one year after they have ceased to be such directors, managers, trustees, and other officers:

1. To compel them to account for their official conduct in the management and disposition of the funds and property committed to their charge;

2. To decree and compel payment by them to the corporation whom they represent, and to its creditors, of all sums of money and of the value of all property which they may have acquired to themselves or transferred to others, or may have lost or wasted by any violation of their duties as such directors, managers, trustees, or other officers;

3. To suspend any such trustee or officer from exercising his office whenever it shall appear that he has abused his trust;

4. To remove any such trustees [trustee] or officer from his office upon proof or conviction of gross misconduct;

5. To direct new elections to be held by the body or board duly authorized for that purpose, to supply any vacancy created by such removal;

6. In case there be no such body or board, or all the members of such board be removed, then to report the same to the governor, who shall be authorized, with the consent of the senate, to fill such vacancy;

7. To set aside all alienations of property made by the trustees or other officers of any corporation contrary to the provisions of law, or for purposes foreign to the lawful business and objects of such corporations, in cases where the person receiving such alienation knew the purposes [purpose] for which the same was made; and,

8. To restrain and prevent any such alienation in cases where it may be threatened or there may be good reason to apprehend that it is intended to be made.

Directors to manage affairs of corporation, etc. § 4161a3. Issuing fraudulent stock. § 9349. Jurisdiction, how exercised. § S152.

§ S151. When any of the visitatorial powers enumerated in the preceding section, over any corporation, are or shall be vested, by statute, in any corporate body or public officer, the provisions of that section shall not be construed to divest or impair the powers so vested.

§ S152. The jurisdiction conferred in the third section of this chapter shall be exer-

cised as in ordinary cases on bill, or petition, as the case may require, or as the court may direct, at the instance of the attorney-general, prosecuting in behalf of the people of this State, or at the instance of any creditor of such corporation, or at the instance of any director, trustee, or other officer of such corporation having a general superintendence of its concerns, or by any stockholders of such corporation.

Jurisdiction of courts over corporate officers. § S150.

§ S153. Whenever a judgment at law, or a decree in chancery, shall be obtained against any corporation, incorporated under the laws of this State, and an execution issued thereon shall have been returned unsatisfied in part or in whole, upon the petition of the person obtaining such judgment or decree, or his representatives, the circuit court within the proper county may sequester the stock, property, things in action and effects of such corporation, and may appoint a receiver of the same.

See § 4161e5, and cross-references.

[Above section does not contemplate that an appointment of a receiver should precede an adjudication, or the adjudication a hearing on notice. *Cook v. Detroit, etc., Co.*, 45 Mich. 453; s. c., 8 N. W. Rep. 74.

A corporate creditor, whose debt has not been merged in a judgment, has no right to intervene and answer and file a cross-bill resisting petition of the judgment creditor filed under above section for sequestration of stock and property of corporation, and appointment of a receiver. *Iron Works v. Circuit Judge*, 100 Mich. 658; s. c., 58 N. W. Rep. 693.

A judgment creditor who petitions for sequestration and appointment of a receiver gains no advantage over other creditors, and any interest which they have in the property are not distributed by such sequestration. *Id.*

Power of court of chancery to appoint a receiver for a street railroad company at suit of its bondholders. *Ralph v. Circuit Judge*, 100 Mich. 164; s. c., 58 N. W. Rep. 837.

Where execution upon a judgment against a corporation has been returned unsatisfied no further proceeding at law can be resorted to for collection, and the remedy by sequestration can only be furnished by equity. *Miner v. Benefit Assn.*, 65 Mich. 84; s. c., 31 N. W. Rep. 763.

The stock of an insolvent corporation is a trust fund for payment of creditors; and as among such creditors "equality is equity." *Turnbull v. Lumber Co.*, 55 Mich. 387; s. c., 21 N. W. Rep. 375. The claim of a creditor to a share in the assets may be established, even though a judgment creditor's bill against it is not filed in behalf of all creditors or even such as come in and share the expense. *Id.* The officers of such corporation cannot go on converting its assets into money and paying preferred creditors after a judgment creditor's bill has been filed against it. *Id.*

An insolvent corporation can make a general assignment to creditors, unless prohibited by statutes or its charter. *Town v. Bank*, 2 Doug. 530; *Covert v. Rogers*, 38 Mich. 363. And on the same terms as a private person, if authorized by its directors. *Kendall v. Bishop*, 76 Mich. 634; s. c., 43 N. W. Rep. 645. But it seems that the consent of the stockholders is necessary. *Bank v. Bank*, Harr. 106. It seems that such an assignment does not operate, per se, as a dissolution of the corporation, or a surrender of its franchises. *Id.*

Whether president has authority to execute a general assignment, *query*. *Richardson v. Rogers*, 45 Mich. 591; s. c., 8 N. W. Rep. 526.

An insolvent corporation may prefer creditors by way of mortgage. *Bank v. Lumber Co.*, 90 Mich. 345; s. c., 51 N. W. Rep. 512.

Directors of an insolvent corporation do not become trustees for creditors alike so as to prevent their giving valid security by way of preference to a stockholder or director. *Id.*

A corporation cannot apply in its corporate capacity and name to be put into the custody of a receiver. *Kimball v. Goodburn*, 32 Mich. 10.

A court of chancery cannot take from directors or vest in a receiver the management and control of the corporate business, except in proceedings under sections 8148-8211. *Ry. Co. v. Circuit Judge*, 31 Mich. 456.

The ex parte appointment of a receiver to manage the business of a corporation and the ex parte granting of an interlocutory injunction to deprive its directors of control are beyond the power of a court of chancery and absolutely void, and mandamus is granted, requiring the vacation of such an order of appointment and the dissolution of such an injunction. *Id.*

A receiver cannot be appointed ex parte in a proceeding by creditors to wind up an insolvent corporation and pending the decision on demurrer whereby the right to file the bill is put in issue. *Cook v. Detroit & M. R. Co.*, 45 Mich. 453; s. c., 8 N. W. Rep. 74.

A receiver may properly be appointed on an undisputed averment of insolvency and a showing of danger of the misappropriation or waste of assets; and such appointment may be made even when the case stands on demurrer and before final decree. *Turnbull v. Lumber Co.*, 55 Mich. 387; s. c., 21 N. W. Rep. 375.

The receiver of a corporation organized for an unlawful purpose can demand in equity an accounting for a debt purporting to be secured by a mortgage. *Burton v. Schildbach*, 45 Mich. 504; s. c., 8 N. W. Rep. 497.

After injunction and appointment of receiver, and receiver has taken upon himself the trust, and other creditors have filed their claims, complainant cannot, on being paid his claim, dismiss the suit and discharge the receiver. *Fay v. Bank, Harr.* 194.

The receiver of a corporation represents neither stockholders nor creditors of a previous corporation which has conveyed its property and interest to the one for which he was appointed, even though the stockholders are the same. *Whitaker v. Grummond*, 68 Mich. 249; s. c., 36 N. W. Rep. 62.

The receiver on voluntary dissolution becomes vested with all the corporate interest except the power to do business, and the corporation ceases to exist. *Cady v. Mfg. Co.*, 48 Mich. 133; s. c., 11 N. W. Rep. 539. An officer of a corporation may be its receiver. *Covert v. Rogers*, 38 Mich. 363.]

§ 8154. Upon a final decree on any such petition, the court shall cause a just and fair distribution of the property of such corporation, and of the proceeds thereof, to be made among the fair and honest creditors of such corporation, in proportion to their debts respectively, who shall be paid in the same order as provided in the next succeeding chapter, in the case of a voluntary dissolution of a corporation.

See § 8195.

§ 8155. Whenever any incorporated company shall have remained insolvent for one whole year, or for one year shall have neglected or refused to pay and discharge its notes, or other evidence of debt, it shall be deemed to have surrendered the rights, privi-

leges, and franchises granted by any act of incorporation, or acquired under the laws of this State, and shall be adjudged to be dissolved.

See § 4161d7, and cross-references.

[Above section does not authorize the filing of bill in chancery by a stockholder to compel a winding up of a manufacturing corporation. *Heap v. Mfg. Co.*, 97 Mich. 147; s. c., 56 N. W. Rep. 349. See *People v. Bank*, 12 Mich. 527; *Montgomery v. Merrill*, 18 id. 338.]

§ 8156. Whenever any corporation having banking powers, or having the power to make loans, on pledges or deposits, or authorized by law to make insurances, shall become insolvent or unable to pay its debts, or shall neglect or refuse to pay its notes or evidences of debt on demand, or shall have violated any of the provisions of its act or acts of incorporation, or of any other act binding on such corporation, any court having equity jurisdiction may, by injunction, restrain such corporation and its officers, from exercising any of its corporate rights, privileges or franchises, and from collecting or receiving any debts or demands, and from paying out or in any way transferring or delivering to any person, any of the moneys, property or effects of such corporation, until such court shall otherwise order.

See note to § 8153.

[See *Atty.-Gen. v. Bank*, *Walk. Ch.* 90, 98; *Atty.-Gen. v. Bank*, *Harr. Ch.* 315.]

§ 8157. Such injunction may be issued on the application of the attorney-general in behalf of the people of this State, or on the application of any creditor or stockholder of such corporation, upon bill or petition, filed for that purpose, and upon due proof of any of the facts in the last section required, to authorize the issuing of the same. Whenever such injunction shall issue against any bank, for any violation of its charter, on the application of any creditor, the court shall proceed to final decree in such case, and adjudge a forfeiture if the proof is sufficient, notwithstanding such creditor may settle with such corporation, and relinquish his claim against said corporation, and in all such cases the attorney-general, under the direction of the governor, or any creditor, shall have the right to appear and prosecute such suit, and such suit shall not be discontinued if either of them so appear and prosecute such suit to final judgment.

See § 4161d8, and cross-references.

[*Barnum v. Bank*, *Harr. Ch.* 116; *Fay v. Bank*, *id.* 194.]

§ 8158. Upon such application being made, and in any stage of the proceedings thereupon, the court may appoint one or more



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 Receivers; directors and stockholders parties; judgment — Stat., §§ 8159-8168.
 

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receivers, to take charge of the property and effects of such corporation, and to collect, sue for and recover the debts and demands that may be due, and the property that may belong to such corporation, who shall, in all respects, be subject to the control of the court.

See § 4161e5, and cross-references.

[The reference of disputed claims which receivers of corporations are allowed to resort to are collateral, and form no part of the statutory proceedings for dissolution on the equity side of the court. *Cady v. Mfg. Co.*, 48 Mich. 133; s. c., 11 N. W. Rep. 839.]

§ 8159. Such receivers shall possess all the powers and authority conferred, and be subject to all the obligations and duties imposed in the next succeeding chapter, upon receivers appointed in case of the voluntary dissolution of a corporation.

See § 4161e6, and cross-references.

§ 8160. If such application be made by a creditor of any corporation, whose directors or stockholders are made liable by law for the payment of such debt in any event or contingency, such directors or stockholders may be made parties to the bill or petition, either on the filing thereof, or in any subsequent stage of the proceedings, whenever it shall become necessary to enforce such liability.

See Const., art. XV, § 7, and cross-references.

§ 8161. If any creditor of a corporation desire to make such directors or stockholders parties to the suit, after a decree therein against the corporation, he may do so, on filing a supplemental bill against them, founded upon such decree, and if such decree was rendered in a proceeding instituted by the attorney-general, such creditor may, on his application, be made complainant therein, with or instead of the attorney-general, and may, in like manner, make the directors and stockholders sought to be charged, defendants in such suit.

See § 8150.

§ 8162. Whenever any creditor of a corporation shall seek to charge the directors, trustees or other superintending officers of such corporation, or the stockholders thereof, on account of any liability created by law, he may file his bill for that purpose in any court having chancery jurisdiction, which shall possess jurisdiction to enforce such liability.

See Const., art. XV, § 7, and cross-references.

§ 8163. The court shall proceed thereon as in other cases, and when necessary, shall cause an account to be taken of the prop-

erty and debts due to and from such corporation, and shall appoint one or more receivers, who shall possess all the powers conferred, and be subject to all the obligations imposed on receivers, by the next succeeding chapter, in case of the voluntary dissolution of a corporation.

§ 8164. But if, on the coming in of the answer, or upon the taking of any such account, it shall appear that such corporation is insolvent, and that it has no property or effects to satisfy such creditor, the court may proceed, without appointing any receiver, to ascertain the respective liabilities of such directors and stockholders, and enforce the same, by its decree, as in other cases.

See Const., art. XV, § 7, and cross-references.

§ 8165. Upon a final decree being made upon any such application to restrain a corporation, or upon any such bill filed against directors or stockholders, the court shall cause a just and fair distribution of the property of such corporation, and of the proceeds thereof, to be made among its fair and honest creditors, in the order and in the proportions prescribed by the next chapter, in the case of a voluntary dissolution of a corporation.

See § 8195.

§ 8166. In all cases in which the directors or other officers of a corporation, or the stockholders thereof, shall have been made parties to a suit in which a decree shall be rendered, if the property of such corporation shall be insufficient to discharge its debts, the court shall proceed to compel each stockholder to pay in the amount due and remaining unpaid on the shares of stock held by him, or so much thereof as shall be necessary to satisfy the debts of the company.

See Const., art. XV, § 7.

§ 8167. If the debts of the company shall remain unsatisfied, the court shall proceed to ascertain the respective liabilities of the directors or other officers, and of the stockholders, and to decree the amount payable by each, and enforce such decree as in other cases.

See Const., art. XV, § 7, and cross-references.

§ 8168. Upon any application to the court having jurisdiction, in any of the cases provided in this chapter, such court may compel such corporation to discover any stock, property, things in action or effects alleged to belong, or to have belonged to it, the transfer and disposition thereof, and the con-



sideration, and all the circumstances of such disposition.

See Act of 1895, at p. 70.

§ 8169. Every officer, agent or stockholder of any corporation, against which proceedings shall be instituted, according to the provisions of this chapter, and every person to whom it shall be alleged that any transfer of any property or effects of such corporation has been made, or in whose possession or control any such property or effects shall be alleged to be, may be compelled, in the discretion of the court, to answer a bill filed to obtain any discovery in the preceding section specified, notwithstanding such answer may expose the corporation of which he is a member to a forfeiture of its corporate rights, or any of them.

See § 8168, and cross-reference.

§ 8170. The answers of the officers and agents of any corporation, shall be evidence against the corporation, in the same manner, and to the same extent as if such answers had been given upon an examination of such officers or agents, as witnesses in the cause, and such officers or agents may subsequently be examined as witnesses by either party, under the order of the court, but no such answer shall be compelled, unless by special order of the court.

§ 8171. Neither the answer of any such officer or agent, nor his testimony upon any such subsequent examination, shall be used as evidence upon any indictment, or other criminal prosecution or proceeding against him.

§ 8172. Whenever any bill shall be filed, or any application made against any corporation, its directors or other superintending officers, or its stockholders, according to the provisions of this chapter, the court may, by injunction, on the application of either party, and at any stage of the proceedings, restrain all proceedings at law, by any creditor against the defendants in such suit; and whenever it shall appear necessary or proper, may order notice to be published in such manner as the court shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the suit, within a reasonable time, not less than six months from the first publication of such order, and in default thereof, to be precluded from all benefit of the decree which shall be made in such suit, and from any distribution which shall be made under such decree.

See § 8148.

§ 8173. The provisions of this chapter shall not extend to any incorporated library or lyceum society; to any religious corporation,

or any incorporated academy or select school; nor to the proprietors of any burying ground incorporated under the laws of this State.

## CHAPTER CCLXXXII.

### The Voluntary Dissolution of Corporations, and of the Abatement of Suits by and against Them.

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8211. Suits against dissolved corporations, how continued.

8211a. Appeal to supreme court.

§ 8174. Whenever the directors, trustees or other officers having the management of the concerns of any corporation, or the majority of them, shall discover that the stock, property and effects of such corporation have been so far reduced by losses or otherwise, that it will not be able to pay all just demands to which it may be liable, or to afford a reasonable security to those who may deal with such corporation, or whenever such directors, trustees or officers, or a majority of them, shall, for any reason, deem it beneficial to the stockholders that such corporation should be dissolved, they may apply to any court having equity jurisdiction, by petition, for a decree dissolving such

## Voluntary dissolution — Stat., §§ 8175–8183.

corporation, pursuant to the provisions of this chapter.

Winding up of corporation. § 4161d7, and cross-references. See note to § 8148.

[See *Cady v. Mfg. Co.*, 48 Mich. 133; s. c., 11 N. W. Rep. 839; *Montgomery v. Merrill*, 18 Mich. 338; *Comrs. v. Bank, Harr. Ch.* 106; *Bank v. Hammond*, 1 Doug. 327; *Bewick v. Harbor Co.*, 29 Mich. 700.]

§ 8175. Every such application shall contain a statement of the reasons which induce the applicants to desire a dissolution of the corporation; and there shall be annexed thereto:

1. A full, just and true inventory of all the estate, both real and personal, in law and equity, of such corporation, and of all the books, vouchers and securities relating thereto.

2. A full, just and true account of the capital stock of such corporation, specifying the names of the stockholders, their residence when known, the number of shares belonging to each, the amount paid in upon such shares respectively, and the amount still due thereon.

3. A statement of all incumbrances on the property of such corporation.

4. A full and true account of all the creditors of such corporation, and of all engagements entered into by such incorporation, which may not have been fully satisfied and canceled, specifying the place of residence of each creditor and of every person to whom such engagements were made, if known, and if not known, the fact to be so stated; the sum owing to each creditor; the nature of each debt or demand; and the true cause and consideration of such indebtedness in each case.

See § 4161d8.

§ 8176. To every such petition shall also be annexed an affidavit of the applicants, that the facts stated in such application and the accounts, inventories and statements contained therein or annexed thereto, are just and true, so far as the applicants respectively know, or have the means of knowing.

See § 4161d9.

§ 8177. Upon such petition, accounts, inventories and affidavits being filed, an order shall be entered requiring all persons interested in such corporation to show cause, if any they have, why such corporation should not be dissolved, before some master in chancery, to be named in such order, at some time and place to be therein specified, not less than three months from the date thereof.

§ 8178. Notice of the contents of such order shall be published once in each week

for three weeks successively, in such paper as the court may direct, and in a newspaper published in the county where the principal place of conducting the business of such corporation shall be situated, if any newspaper be published in such county.

Publication of notices, etc. § 4161e3, and cross-references.

§ 8179. On the day appointed in such order, such master shall proceed to hear the allegations and proofs of the parties, and shall take testimony in relation thereto, and shall, with all convenient speed, report the same to the court, with a statement of the property, effects, debts, credits and engagements of such corporation, and of all other matters and things pertaining to such corporation.

See § 8204.

§ 8180. Such master shall be entitled to the use of the original petition and schedules annexed thereto, if he require the same, by an order on the register of the court with whom they may be deposited, and shall return the same with his report.

§ 8181. Upon the coming in of the report of the master, if it shall appear to the court that such corporation is insolvent, or that for any reason a dissolution thereof will be beneficial to the stockholders, and not injurious to the public interest, a decree shall be entered, dissolving such corporation, and appointing one or more receivers of its estate and effects; and such corporation shall thereupon be dissolved, and shall cease.

See § 4161d7, and cross-references.

[A corporation cannot apply in its corporate capacity and name to be put into hands of a receiver. *Kimball v. Goodburn*, 32 Mich. 10; see *Cady v. Mfg. Co.*, 48 id. 136; s. c., 11 N. W. Rep. 839.]

§ 8182. Any of the directors, trustees or other officers of such corporation, or any of its stockholders, may be appointed receivers, who, upon entering upon the duties of their appointment, shall give such security to the people of this State, and in such penalty as the court shall direct, conditioned for the faithful discharge of the duties of their appointment, and for the due accounting for all moneys and effects received by them as such receivers.

See § 4161a3, and cross-references.

[An officer of an insolvent corporation may be its receiver. *Covert v. Rogers*, 35 Mich. 363.]

§ 8183. Such receivers shall be vested with all the estate, real and personal, of such corporation, from the time of their having filed the security hereinbefore required, and shall be trustees of such estate for the bene-

fit of the creditors of such corporation, and of its stockholders.

Powers of receivers. § 4161e6, and cross-references.

§ 8184. Such receiver shall have all the power and authority conferred by law upon trustees to whom an assignment of the estate of an insolvent debtor may be made, pursuant to the provisions of the one hundred and forty-fifth chapter of these Revised Statutes.

See § 4161e6, and cross-references. Corporation may sue and be sued. § 4860, subd. 1, and cross-references.

[See *Cady v. Mfg. Co.*, 48 Mich. 137; s. c., 11 N. W. Rep. 839.]

§ 8185. If there shall be any sum remaining due upon any share of stock subscribed in such corporation, the receiver shall immediately proceed and recover the same, unless the person so indebted shall be wholly insolvent; and for that purpose may file his bill in any court having equity jurisdiction, or may commence and prosecute an action at law for the recovery of such sum, without the consent of any creditors of such corporation.

§ 8186. The receivers, immediately on their appointment, shall give notice thereof, which shall contain the same matters required by law in notices of trustees of insolvent debtors; and in addition thereto, shall require all persons holding any open or subsisting contract of such corporation, to present the same in writing, and in detail, to such receivers, at the time and place in such notice specified; which shall be published once in each week for six successive weeks in such paper as the court may direct, and in a newspaper printed in the county where the principal place of conducting the business of such corporation shall have been situated, if such newspaper be there published.

§ 8187. All sales, assignments, transfers, mortgages, and conveyances of any part of the estate, real or personal, including things in action, of every such corporation, made after the filing of the petition for a dissolution thereof, in payment of, or as security for, any existing or prior debt, or for any other consideration, and all judgments confessed by such corporation after that time, shall be absolutely void as against the receivers who may be appointed on such petition, and as against the creditors of such corporation.

§ 8188. After the first publication of the notice of the appointment of receivers, every person having possession of any property belonging to such corporation, and every person indebted to such corporation, shall account and answer for the amount of such

debt, and for the value of such property to the said receivers; and all the provisions of law in respect to trustees of insolvent debtors, the collection and preservation of the property of such debtors, the concealment and discovery thereof, and the means of enforcing such discovery, shall be applicable to the receivers so appointed, and to the property of such corporation.

§ 8189. Such receivers shall have the same power to settle any controversy that shall arise between them and any debtors or creditors of such corporation, by a reference, as is given by law to trustees of insolvent debtors, and the same proceedings shall be had for that purpose, and with the like effect; and application may be made to any officer authorized to appoint such referees on the application of the trustees of insolvent debtors, who shall proceed therein in the same manner; and the referees shall proceed in like manner and file their report with the like effect in all respects.

See § 4161e6, and cross-references.

§ 8190. The receivers shall be subject to all the duties and obligations imposed by law on trustees of insolvent debtors, so far as they may be applicable, except where other provisions are herein made, and they shall call a general meeting of the creditors of such corporation within four months from the time of their appointment, when all accounts and demands in favor of and against such corporation, and all its open and existing contracts shall be ascertained and adjusted, as far as may be, and the amount of moneys in the hands of the receivers declared.

See § 4161f4.

§ 8191. If there shall be any open and subsisting engagements or contracts of such corporation, which are in the nature of insurances or contingent engagements of any kind, the receivers may, with the consent of the party holding such engagement, cancel and discharge the same by refunding to such party the premium or consideration paid thereon to such corporation, or so much thereof as shall be in the same proportion to the time which shall remain of any risk assumed by such engagement, as the whole premium bore the whole term of such risk; and upon such amount being paid by such receivers to the person holding or being the legal owner of such engagement, it shall be deemed canceled and discharged as against such receivers.

§ 8192. Such receivers shall, in addition to their actual disbursements, be entitled to such commissions as the court shall allow, not exceeding the sum allowed by law to executors and administrators.

§ 8193. The receivers shall retain out of



the moneys in their hands, a sufficient amount to pay the sums which they are hereinbefore authorized to pay for the purpose of canceling and discharging any open or subsisting engagements.

§ 8194. If any suit be pending against the corporation, or against the receivers, for any demand, the receivers may retain the proportion which would belong to such demand, if established, and the necessary costs in their hands, to be applied according to the event of such suit, or to be distributed in a second or other dividend.

§ 8195. The receivers shall distribute the residue of the moneys in their hands among all those who have exhibited their claims as creditors, and whose debts have been ascertained, as follows:

1. All debts entitled to a preference under the laws of the United States.
2. Executions actually levied against such corporations to the extent of the property on which they shall respectively be levied, and according to their legal priority.
3. Creditors having made special deposits, if such deposits remain in kind.
4. All other creditors of such corporation, in proportion to their respective demands, without giving any preference to debts due on specialties.

See Const., art. XV, § 5. Distribution of property. § 8165. Distribution of surplus. § 8199.

§ 8196. If the whole of the estate of such corporation be not distributed on the first dividend, the receivers shall, within one year thereafter, and within sixteen months after their appointment, make a second dividend of all the moneys in their hands among the creditors entitled thereto; of which, and that the same will be a final dividend, notice shall be published once in each week for three weeks successively, in such paper as the court may direct, and in a newspaper printed in the county where the principal place of business of such corporation was situated, if there be such newspaper.

§ 8197. Such second dividend shall be made in all respects in the same manner as herein prescribed in relation to the first dividend, and no other shall be made thereafter among the creditors of such corporation, unless ordered by the court, except to the creditors having suits against it, or against the receivers, pending at the time of such second dividend, and except of the moneys which may be retained to pay such creditors; but every creditor who shall have neglected to exhibit his demand before the first dividend, and who shall deliver his account to the receivers before such second dividend, shall receive the sum he would have been entitled to on the first dividend, before any distribution be made to the other creditors.

§ 8198. After such second dividend shall have been made, the receivers shall not be

answerable to any creditor of such corporation, or to any person having claims against such corporation, by virtue of any open or subsisting engagement, unless the demand of such creditor shall have been exhibited, and the engagements upon which such claims are founded, shall have been presented to the said receivers, in detail and in writing, before or at the time specified by them in their notice of a second dividend.

See § 4161f4.

§ 8199. After a final dividend is made, and the debts of any such corporation are paid, if there shall remain any surplus in the hands of the receivers, they shall distribute the same among the stockholders of such corporation, in proportion to the respective amounts paid by them, severally, on their shares of stock.

Order in which debts are to be paid. § 8195.

§ 8200. When any suit pending at the time of the final dividend, shall be terminated, they shall apply the moneys retained in their hands for that purpose, to the payment of the amount recovered, and their necessary costs and expenses; and if nothing shall have been recovered, they shall distribute such moneys, after deducting their expenses and costs, among the creditors and stockholders of the corporation, in the same manner as herein directed in respect to a second dividend.

§ 8201. The receivers shall be subject to the control of the court, and may be compelled to account at any time; they may be removed by the court, and any vacancy created by such removal or by death or otherwise, may be supplied by the court.

§ 8202. Within three months after the time herein prescribed for making a second dividend, the receivers shall render a full and accurate account of their proceedings to the court, which shall be referred to a master to examine and report thereon.

See § 4161e7, and cross-references.

§ 8203. Previous to rendering such account, the receivers shall insert a notice of their intention to present the same, once in each week for three weeks successively, in such paper as the court may direct, and in a newspaper of the county in which notices of dividends are herein required to be published, if there be one, specifying the time and place at which such account will be rendered.

§ 8204. The master to whom such account shall be referred, shall hear and examine the proofs, vouchers and documents offered for

or against such account, and shall report thereon fully to the court.

See § 8179.

§ 8205. Upon the coming in of such report, the court shall hear the allegations of all concerned therein, and shall allow or disallow such account, and decree the same to be final and conclusive upon all the creditors of such corporation, upon all persons who have claims against it upon any open or subsisting engagements, and upon all the stockholders of such corporation.

§ 8206. Such receivers shall also account from time to time in the same manner, and with the like effect, for all moneys which shall come to their hands after the rendering of such account as hereinbefore provided, and for all moneys which shall have been retained by them for any of the purposes hereinbefore specified, and shall pay into court all unclaimed dividends.

§ 8207. The provisions of this chapter shall not extend to any incorporated library or lyceum society; to any religious corporation, or any incorporated academy or select school; nor to the proprietors of any burying ground incorporated under the laws of this State.

[See *Bewick v. Harbor Co.*, 39 Mich. 700.]

§ 8208. The dissolution of a corporation by a decree of the court, or by the expiration of its charter, or otherwise, shall not abate any suit or proceedings in favor of such corporation which shall have been pending at the time of such dissolution; but all such suits or proceedings may be continued by the receivers who shall have been appointed for such corporation by the court, or by the trustees on whom the estate and effects of such corporation shall have devolved, in the name of such corporation, or in the names of such receivers or trustees, who may be substituted as plaintiffs under the direction of the court in which the suit shall be pending, and subject to such order as the court may deem expedient, in relation to the payment or security of costs.

§ 8209. Whenever a receiver of the property and effects of a corporation has been appointed before its dissolution, or afterwards, new suits may be brought and carried on by any such receivers, either in their own names, or in the name of the corporation for which they shall have been appointed.

§ 8210. No suit commenced in the name of any such receiver, shall be abated by his removal or death; but the same may be continued in the name of the remaining receiver, if there be one, or in the name of the successor of the receiver so removed or deceased, or of the corporation, as may be

directed by the court in which the suit may be pending.

§ 8211. The court in which any suit or proceeding against a corporation which shall have been dissolved by a decree in chancery or otherwise, shall be pending at the time of such dissolution, shall have power, on the application of either party thereto, to make an order for the continuance of such suit or proceeding, and the same may thereafter be continued until a final judgment or decree shall be had therein.

§ 8211a. (As enacted April 25, 1893.) Any corporation, person or persons claiming to be aggrieved by any decree or final order of any circuit court in chancery in any proceedings mentioned in this chapter, may appeal therefrom to the supreme court. Such appeal shall be claimed by a written claim delivered or transmitted within forty days from the entry of such decree or final order to the register in chancery of the court where such decree or final order was entered, which said register shall make entry of, and the appellant shall, within forty days, file with said register a bond naming as obligee the said register, and with sufficient sureties approved by the circuit judge, or said court, or a circuit court commissioner of the county wherein said decree was entered, and with such penalty as such judge or commissioner shall approve, conditioned for the diligent prosecution of such appeal and for the performance or satisfaction of any decree or final order of the supreme court against the appellant in the cause, and for payment of all costs that may be awarded against the appellant in said supreme court in the matter of said appeal: Provided, That the motion for such approval shall be on a notice to whom it may concern, of at least six days, to be filed in the office of said register, said notice to contain the penalty and the names of the sureties of the proposed bond, and on the hearing of such motion, any corporation, person or persons claiming to be interested shall be heard as to the sufficiency of the penalty named and the pecuniary responsibility of the sureties proposed to such bond: And provided further, That in case of such motion being before a circuit court commissioner, the circuit judge or the judge at chambers of the court in which such decree or final order is entered, may, on special motion of any corporation, person or persons claiming to be interested, order an additional bond and fix the penalty thereof and approve the sureties thereto on proper showing: Provided further, That upon the filing of said bond with approval as aforesaid, the appeal shall be deemed perfected and the register in chancery shall, on payment of five dollars to him on behalf of the appellant, make return to the supreme court, and the supreme court shall have power to hear and determine such appeal and all matters concerning the same and

Scire facias to vacate charter, etc.—Stat., §§ 8618–8620, 8624, 8625, 8631, 8633, 8634.

shall have power to reverse, affirm or alter the order or decree appealed from and to make such other order or decree therein as shall be just, in like manner and with like effect as on appeals in suits in chancery according to the existing statutes of the State of Michigan and the rules of the supreme court in such case made and provided: And provided further, That the supreme court while any suit shall be pending therein, may, on special motion, give such directions as to said court shall seem proper concerning any stay of proceedings caused by the appeal: And provided further, That the supreme court or the circuit judge of the court where such decree or final order was made shall, on special motion and such proper showing, have power after such appeal is perfected to order an additional bond and fix the penalty thereof and approve the sureties thereto, or to refer such approval to a circuit court commissioner of said county in which the cause shall have been pending: And provided further, That the supreme court aforesaid, or the circuit court, may, concerning any bond aforesaid, order a suit to be brought and prosecuted for the benefit of any person, persons or corporation as such court may direct, and thereupon such suit may be brought and prosecuted to effect, and all moneys collected in such suit shall be disposed of as such court shall direct.

See § 4161f8.

#### **TITLE XXXIII. WRITS OF SCIRE FACIAS, INFORMATION IN NATURE OF QUO WARRANTO, ETC.**

Ch. 297. Writs of scire facias.

298. Information in nature of a quo warranto, and in certain other cases.

#### **CHAPTER CCXCVII.**

##### **Writs of Scire Facias.**

Sec. 8618. Writ to vacate acts of incorporation.

8619. Contents of writ.

8620. Judgment.

8624. Mode of serving writ.

8625. Appearance of defendant, etc.

8631. Copies of judgments to be filed with secretary of State.

8633. Secretary of State to publish notice.

8634. Equity jurisdiction and powers.

§ 8618. A writ of scire facias may also be issued out of the supreme court, upon the relation of the attorney-general, against any corporation created or renewed by any act of the legislature, for the purpose of vacating and annulling such act on the ground that the same was passed upon some fraudulent suggestion, or concealment of a material fact, made by the persons incorporated by such act, or made with their consent or knowledge, but no such writ shall be issued under the provisions of this section, except when the legislature shall spec-

ially direct the attorney-general to prosecute the same.

See § 4161a1, and cross-references. Forfeiture of charter, etc. § 4161d7, and cross-references.

§ 8619. In every writ of scire facias issued under either of the two preceding sections, the particular matters and circumstances upon which the same is founded, shall be set forth with such convenient certainty, that the defendants may be fully apprised of the general nature thereof.

§ 8620. If the matters duly alleged in such writ, shall be found for the people, or the defendants shall make default, judgment shall be rendered, that the \* \* \* act of incorporation, specified in the writ, \* \* \* be vacated and annulled.

§ 8624. \* \* \* If such writ be issued against a corporation, it shall be served in the same manner as prescribed for the service of an original summons upon a corporation.

See § 4161c9, and cross-references.

§ 8625. In all cases where the writ shall be returned duly served, the appearance of the persons or corporations so summoned, shall be entered by the clerk as in other cases; and the plaintiff shall be entitled, on the filing of such writ, so returned, to enter a rule requiring the defendant to plead to such writ, within twenty days after service of notice thereof, notice of which rule shall be served in the same manner, and with like effect, as in personal actions.

§ 8631. Whenever judgment shall be rendered against the defendant, upon any scire facias brought to \* \* \* vacate any act of incorporation, a copy of the record of such judgment shall be forthwith filed in the office of the secretary of State.

§ 8633. If the record relate to an act of incorporation, the secretary of State shall forthwith cause notice of the substance and effect of such recovery to be published for four successive weeks in some newspaper published at the capital, and the like time in a newspaper printed in the county where the principal office or place of business of the company created by such act shall be, if one be there published.

§ 8634. Whenever any judgment shall be rendered for the vacating and annulling of any act of incorporation, pursuant to the provisions of this chapter, any court having equity jurisdiction shall have the same powers to restrain the corporation created by such act, to appoint a receiver of its property and effects, and to take an account and make distribution thereof among its creditors, as in cases of the voluntary dissolution of corporations; and it shall be the duty of the attorney-general, immediately after the rendering of any judgment vacating and annulling any such act of incorporation, to



institute proceedings for that purpose in said court.

### CHAPTER CCXCVIII.

#### Information in the Nature of a Quo Warranto, and in Certain Other Cases.

Sec. 8635. Informations of courts, granted in what cases.

- 8636. Summons thereon.
- 8646. Informations against corporation.
- 8647. Who to grant leave.
- 8648. Summons on information.
- 8649. When summons not necessary.
- 8650. Proceedings on return of summons.
- 8651. Rule for appearance.
- 8652. Publication of rules.
- 8653. Information against several persons.
- 8654. Enlarging time to plead.
- 8655. Judgment on conviction.
- 8656. Court may impose a fine.
- 8657. Judgments against corporation.
- 8658. Collection of costs.
- 8659. Powers of courts having equity jurisdiction.
- 8660. Record of judgment to be filed; notice thereof to be published.
- 8662. Information may be filed in circuit court.

§ 8635. An information in the nature of a quo warranto, may be filed in the supreme court, either in term time or vacation, by the attorney-general, against individuals, upon his own relation, or upon the relation of any private party, and without applying to such court for leave, in either of the following cases:

1. When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, civil or military, or any franchise within this State; or any office in any corporation created by the authority of this State;

3. When any association, or number of persons shall act as a corporation within this State, without being legally incorporated.

See § 4161d7, and cross-reference. Duty of attorney-general. § 9854m. Information may be filed in circuit court. § 8662. See note to § 8646.

[Quo warranto proceedings should generally be instituted in the circuit court. *Coon v. Atty.-Gen.*, 42 Mich. 65; s. c., 3 N. W. Rep. 258. It is discretionary with the supreme court to grant an application for leave to file the information. *Atty.-Gen. v. Erie, etc., Co.*, 55 Mich. 15; s. c., 20 N. W. Rep. 696; *People v. Tisdale*, 1 Doug. 59.

Whether supreme court would require attorney-general to file an information in nature of quo warranto against his own judgment, *quere*. *Coon v. Atty.-Gen.*, *supra*. Attorney-general has same discretion in cases on relation as in other cases, under the law requiring him to file informations in nature of quo warranto where he has good reason to believe they can be established. *Yates v. Atty.-Gen.*, 41 Mich. 728; s. c., 3 N. W. Rep. 205.

The State cannot be estopped from instituting quo warranto proceedings against a corporate body on ground that it has been recognized as a corporation by a municipality. *Atty.-Gen. v. Hanchett*, 42 Mich. 436; s. c., 4 N. W. Rep. 182.

Whether quo warranto or *scire facias* was the proper remedy, prior to Revised Statutes of 1846, by which to proceed against a private corporation for violating its charter, *quere*. *People v. Bank*, 1 Doug. 282.

A judgment creditor's application for leave to file an information in nature of quo warranto to enforce a forfeiture for non-user of the rights and franchises of a manufacturing company was denied in the absence of any showing that the statutory remedy provided for judgment creditors, which is deemed the more appropriate one, is not available. *Carpenter v. Mfg. Co.*, 33 Mich. 413.

The statute concerning informations in nature of a quo warranto contemplates the punishments of corporations for the violation of State law and policy only. *Maybury v. Gas Light Co.*, 38 Mich. 154.

An information cannot be filed under above section where articles of association state a purpose for which the statute authorizes a corporation to be formed, and where the requirements of law preliminary to incorporation are fulfilled. The question whether the corporation is exercising any franchise or privilege not conferred by law is to be tested by information filed, on leave of court, under section 8646. *Atty.-Gen. v. Lorman*, 59 Mich. 157; s. c., 26 N. W. Rep. 311.

The constitutionality of a statute may be inquired into in quo warranto proceedings to try the right to exercise corporate franchises. *Mason v. Perkins*, 73 Mich. 303; s. c., 41 N. W. Rep. 426.

Dissolution of a company not regularly incorporated, but supposing itself to be so, does not prevent creditors from looking to the old organization for payment. *Mfg. Co. v. Stuart*, 46 Mich. 482; s. c., 9 N. W. Rep. 527.]

§ 8636. Whenever any such information shall be filed, a summons shall be issued thereon, which shall be served and returned in like manner as in personal actions; and whenever the same shall be returned served, the clerk shall enter the defendant's appearance.

See § 4161c9, and cross-references. Summons. § 8648. Summons not necessary, when. § 8649.

[See *People v. Cicott*, 15 Mich. 327.]

§ 8646. An information in the nature of a quo warranto may also be filed by the attorney-general, upon his own relation, or upon the relation of any private party, on leave granted, against any corporate body, whenever such corporation shall,

1. Offend against any of the provisions of the act or acts, creating, altering, or renewing such corporation; or,

2. Violate the provisions of any law, by which such corporation shall have forfeited its charter by misuser; or,

3. Whenever it shall have forfeited its privileges and franchises by non-user; or,

4. Whenever it shall have done or omitted any acts which amount to a surrender of its corporate rights, privileges and franchises; or,

5. Whenever it shall exercise any franchise or privilege not conferred upon it by law;

And it shall be the duty of the attorney-general, whenever he shall have good reason to believe that the same can be established by proof, to file such information in every case of public interest; and also, in every other case in which satisfactory security shall be given to indemnify the people of

## Quo warranto — Stat., §§ 8647-8655.

this State against all costs and expenses to be incurred thereby.

See § 8653. Information filed in circuit court. § 8662; see note to § 8635. De facto corporations. § 4161d4. Existence of, not to be questioned collaterally. § 8140, note.

[A claim of the forfeiture of a franchise cannot be raised collaterally, but only in a direct proceeding for that purpose. *Cahill v. Ins. Co.*, 2 Doug. 124; *People v. Bank*, 12 Mich. 527; *R. R. Co. v. Johnson*, 49 id. 148; s. c., 13 N. W. Rep. 492; *Grand Rapids v. Hydraulic Co.*, 66 Mich. 606; s. c., 33 N. W. Rep. 749.

If a corporation has forfeited its rights by misfeasance or non-feasance, such forfeiture must be shown by the pleadings; the legal presumption is otherwise. *Atty.-Gen. v. Bank*, Harr. 315.

Unreasonable delay to take advantage of a forfeiture may waive it. *People v. Bank*, 1 Doug. 282.

Where a corporation has been guilty of such conduct as to authorize a forfeiture of its charter, it cannot avoid the forfeiture by subsequent good conduct. *People v. Bank*, 12 Mich. 527.

A statute which imposes a forfeiture of franchises for failure to perform should explicitly fix the time at which the forfeiture may be enforced. *R. R. Co. v. Johnson*, 49 Mich. 148; s. c., 13 N. W. Rep. 492.

There is no inherent jurisdiction in chancery to act upon corporation defaults and violations of charter. *Tripp v. Plank Road Co.*, 66 Mich. 1; s. c., 32 N. W. Rep. 907.

If a corporation permits acts to be done which destroy the purposes of its creation, it is equivalent to a surrender of its rights. *Bank Commissioners v. Bank*, Harr. 106.

The fact that a corporation is exceeding its express powers will not necessarily result in a forfeiture of its entire franchise. *Meuer v. Detroit, etc., Assn.*, 95 Mich. 451; s. c., 54 N. W. Rep. 954.]

§ 8647. Leave to file such information may be granted by the supreme court in term time, or by any justice thereof, but by no other officer, upon the application of the attorney-general in vacation; and such court or justice may, in their discretion, direct notice of such application to be given to such corporation or its officers, previous to granting such leave, and may hear such corporation in opposition thereto.

See § 8659.

§ 8648. Upon such leave being granted and indorsed upon the information, under the hand of the clerk of the court, or of the justice granting the same, the attorney-general may forthwith file the same, and thereupon may issue a writ of summons against such corporation, commanding the sheriff to summon such corporation to appear in the said court, and to answer the said information.

See § 8636, and cross-references.

§ 8649. But when such corporation shall appear by counsel, pursuant to the notice above authorized to be given, and shall be heard in opposition to granting such leave, the court or justice granting leave may also

direct a rule to be entered, requiring the defendants to appear and plead to such information, within twenty days after service of a copy thereof, and notice of said rule; and in such case it shall not be necessary to issue a writ of summons.

§ 8650. Whenever any writ of summons, issued upon an information in the nature of a quo warranto, shall be returned duly served, the attorney-general may thereupon enter a rule, in vacation or in term, requiring the defendants to plead to the information filed against them in twenty days after service of a copy thereof; and the same shall be served in the same manner, and with like effect, as rules upon declarations in personal actions.

[See *People v. De Mill*, 15 Mich. 161. Plea by a corporation. See *Atty.-Gen. v. Bank*, 2 Doug. 359.]

§ 8651. Whenever any such writ shall be returned not served, by reason of the defendants, or the officers of the defendants, not being found within the county, the court shall direct a rule to be entered, requiring the defendant, whether an individual or a corporation, to appear and plead to such information, within twenty days after the last publication of such rule as hereinafter provided.

§ 8652. A certified copy of such rule shall be published for four weeks successively, in such paper as the court may direct; and if the defendant shall not appear and plead to such information, within the time limited in the rule, the plaintiff shall be entitled, upon filing an affidavit of the due publication of such rule, to enter the default of the defendant, in like manner as if the writ had been duly served.

Publication of notices, etc. § 4161e3, and cross-references.

[See *People v. Miller*, 15 Mich. 354.]

§ 8653. When several persons claim to be entitled to the same office or franchise, one information may be filed against all such persons in order to try their respective rights to such office or franchise.

See § 8646, and cross-references.

[*People v. Knight*, 13 Mich. 231.]

§ 8654. An order may be made enlarging the time to plead or demur, upon an information in the nature of a quo warranto, by the supreme court, or by a justice thereof; but by no other person.

§ 8655. Whenever any defendant, whether a natural person or a corporation, against whom an information in the nature of a quo warranto shall have been exhibited, shall be found or adjudged guilty of usurping or intruding into, or unlawfully holding or exercising any office, franchise or privi-

lege, judgment shall be rendered that such defendant be ousted, and altogether excluded from such office, franchise or privilege; and also, that the attorney-general, or the relator, if there be one, recover his costs against such defendant.

See § 8657, and cross-references.

[A corporation that has usurped franchises, but not in bad faith, was merely ousted therefrom, with a nominal fine and costs. *Stewart v. Society*, 41 Mich. 67; s. c., 1 N. W. Rep. 931.

Judgments of ouster and costs. *People v. Denton*, 35 Mich. 305; see *People v. Hartwell*, 12 id. 503; *People v. Connor*, 13 id. 238; *People v. Mollitor*, 23 id. 341.]

§ 8656. The court may also, in its discretion, impose a fine upon any such person or corporation against whom such judgment shall be rendered, not exceeding two thousand dollars; which fine, when collected, shall be paid to the State treasurer, and shall by him be distributed and paid to the several county treasurers to the credit of the several library funds, in the same proportions that the income of the primary school fund was apportioned to the several counties, at the then last apportionment of such school moneys.

See § 8659.

[*People v. Hartwell*, 12 Mich. 508; *People v. Cicott*, 13 id. 329; *People v. Miller*, 16 id. 205.]

§ 8657. (As amended April 26, 1887.) Whenever it shall be found or adjudged that any corporation against which an information in the nature of a quo warranto shall have been filed, has, by any misuser, non-user or surrender, forfeited its corporate rights, privileges and franchises, judgment shall be rendered that such corporation be ousted and altogether excluded from such corporate rights, privileges and franchises, and that the said corporation be dissolved; or, in lieu of such judgment (except in case of such surrender), the court may impose a fine not exceeding ten thousand dollars upon said corporation; but such fine shall not prevent further prosecution for any continuance or repetition of the conduct complained of, to be had on like leave of the court first had and obtained.

Dissolution of corporation, etc. § 4161d7, and cross-references. Judgment on conviction. § 8655. Record of, to be filed. § 8660.

§ 8658. If judgment be rendered upon any such information against any corporation, or against any persons claiming to be a corporation, the court may cause the costs therein to be collected, by execution against the persons claiming to be a corporation, or by attachment against the directors or other officers of any such corporation.

§ 8659. Whenever any such judgment shall

be rendered, any court having equity jurisdiction shall have the same powers to restrain the corporation against which it is rendered: to appoint a receiver of its property and effects; and to take an account and make distribution thereof among its creditors, as in case of the voluntary dissolution of a corporation; and it shall be the duty of the attorney-general, immediately after the rendering of any such judgment, to institute proceedings for that purpose in said court.

As to appointment of receivers, see § 4161e5, and cross-references. See §§ 8647, 8659.

§ 8660. Whenever any such judgment shall be rendered against a corporation, a copy of the record of such judgment shall be forthwith filed in the office of the secretary of State; and such secretary shall forthwith cause notice of the substance and effect of such recovery to be published for four successive weeks in some newspaper printed at the seat of government, and in a newspaper printed in the county where the principal office or place of business of such corporation shall be, if a newspaper be there printed.

See § 8657, and cross-references.

§ 8662. An information in the nature of a quo warranto may be filed in the several circuit courts of this State, as well as in the supreme court, and that all of the provisions of chapter one hundred and sixty-one, of the compiled laws of this State, shall be applicable to such proceedings in such circuit courts, and all powers conferred upon the several judges of the supreme court by said chapter are hereby conferred upon the judges of the several circuit courts respectively: Provided, That no such information shall be filed and allowed by any such circuit court against any judge of the supreme court, or any State officer: And provided also, That no writ of summons, issued upon any such information, shall be served out of the jurisdiction of the court issuing the same, and all issues joined between the parties shall be tried, and all assessment of damages shall be made in the circuit court where such cause is pending.

Informations under this act may be filed by the prosecuting attorney of the proper county, on his own relation, or that of any citizen of the county, without leave of the court, or by any citizen of the county by special leave of the court.

Said circuit courts are hereby authorized to make rules to regulate proceedings under this act, to have effect until the supreme court shall make rules therefor.

See § 8646, and cross-references.

[Special leave to a citizen to file an information



Forgery; obstructions of railroads — Stat., §§ 8820, 9225, 9274-9276.

in the nature of a quo warranto under above section cannot be granted by the circuit judge at chambers. *McDonald v. Supervisors*, 91 Mich. 459; s. c., 51 N. W. Rep. 1114.

Leave to a private relator to file an information should not be granted without a responsible showing of relator's rights in the premises. *Lamoreaux v. Atty.-Gen.*, 89 Mich. 146; s. c., 50 N. W. Rep. 812.

Quo warranto proceedings should generally be instituted in the circuit court. *Coon v. Atty.-Gen.*, 42 Mich. 65; s. c., 3 N. W. Rep. 258.

Probate judges are within exception of above section which permits information to be filed in circuit court, except against State officers. *Secord v. Foutch*, 44 Mich. 89; s. c., 6 N. W. Rep. 110.

Quo warranto is a proper remedy to test the rights of one claiming to have been elected a director in a corporation. *Atty.-Gen. v. Looker*, 69 N. W. Rep. 929.

A corporation organized in another State, though doing business in Michigan, cannot maintain quo warranto to prevent a corporation organized in Michigan from taking a similar name. *People v. Ins. Co.*, 69 N. W. Rep. 653.]

#### **TITLE XXXVI. PUNISHMENT OF FRAUDULENT DEBTORS, AND THE RELIEF OF INSOLVENT DEBTORS.**

##### **CHAPTER CCCVII.**

###### **General Provisions.**

Sec. 8820. Corporation deemed creditor.

§ 8820. A corporation shall be deemed a creditor within the meaning of the provisions of this title, and may present or unite in any petition as other creditors; and any such petition may be signed by a director or other officer of the corporation, thereto duly authorized under its common seal; and any affidavit required of creditors may be made and signed by such director or officer.

#### **TITLE XXXIX. CRIMES AND THE PUNISHMENT THEREOF.**

Ch. 319. Forgery and counterfeiting.  
321. Offenses against the public peace.  
324. Offenses against the public policy.

##### **CHAPTER CCCXIX.**

###### **Forgery and Counterfeiting.**

Sec. 9225. Forgery of signature of corporate officer or agent.

§ 9225. If any fictitious or pretended signature, purporting to be the signature of an officer or agent of any corporation, shall be fraudulently affixed to any instrument or writing, purporting to be a note, draft or other evidence of debt, issued by said corporation, with intent to pass the same as true, it shall be deemed a forgery, though no such person may ever have been an officer or agent of such corporation, nor ever have existed.

##### **CHAPTER CCCXXI.**

###### **Offenses against the Public Peace.**

Sec. 9274. Obstructing business of railroad companies and other corporations, penalty for.

9275. Conspiring to obstruct, penalty.

9276. Act not to apply, when.

§ 9274. If any person or persons shall willfully and maliciously by any act, or by means of intimidation, impede or obstruct, except by due process of law, the regular operation and conduct of the business of any railroad company or other corporation, firm or individual in this State, or of the regular running of any locomotive engine, freight, or passenger train of any such company, or the labor and business of any such corporation, firm or individual, he or they shall, on conviction thereof, be punished by imprisonment in the county jail not more than three months, or in the State prison for a period not exceeding one year.

§ 9275. If two or more persons shall willfully and maliciously combine, or conspire together, to obstruct or impede, by any act or by means of intimidation, the regular operation and conduct of the business of any railroad company or any other corporation, firm, or individual in this State, or to impede, hinder, or obstruct, except by due process of law, the regular running of any locomotive engine, freight or passenger train, on any railroad, or the labor and business of any such corporation, firm, or individual, such persons shall, on conviction thereof, be punished by imprisonment in the county jail for a period not more than three months, or in the State prison for a period not exceeding two years.

§ 9276. This act shall not be construed to apply to cases of persons voluntarily quitting the employment of any railroad company or such other corporation, firm, or individual, whether by concert of action or otherwise.

##### **CHAPTER CCCXXIV.**

###### **Offenses against the Public Policy.**

Sec. 9349. Issuing fraudulent stock, etc., a felony; penalty.

9350. Knowingly selling fraudulent stock; penalty.

9351. Statement under oath of shares of stock to be filed with secretary of State.

9352. Penalty for neglect to file such statement.

9354f. Unlawful to keep office wherein gambling in stocks, bonds, etc., is conducted; certain acts declared gambling.

9354g. Commission merchants, etc., to furnish on demand, written statement, etc.

9354h. Penalty for violation of preceding section.

9354j. Certain combinations or trusts in restraint of trade prohibited; penalty.

9354k. Such contracts void whether made in or out of the State.

9354l. Carrying such contract into effect, a misdemeanor; penalty.

## Frauds by corporations, etc.—Stat., §§ 9349–9352, 9354f–9354h.

Sec. 9354m. Forfeiture of charter for violation.  
 9354n. Duty of attorney-general.  
 9354o. Provisions of this act not to apply, when.  
 9354p. This act to be published.

§ 9349. Any person or persons who shall fraudulently issue or cause to be issued, any stock, scrip or evidence of debt, of any bank, insurance, mining, plank, or other incorporated company of this State, or who shall sell or offer for sale, hypothecate, or otherwise dispose of any such stock, scrip, or other evidence of debt, knowing the same to be so fraudulently issued, shall be deemed guilty of a felony, and on conviction thereof shall be punished by imprisonment in the State prison not more than ten nor less than one year.

See § 8150.

§ 9350. Any person or persons who shall sell, or offer for sale any stock thus fraudulently issued, and purporting to be the stock, scrip, or evidence of debt of any corporation located out of the State of Michigan, knowing the same to be so fraudulently issued, or shall hypothecate, or in any manner dispose of the same for value, shall, on conviction thereof, be punished by imprisonment in the State prison not more than ten nor less than one year.

Sale of stock. § 4161c4.

§ 9351. Every \* \* \* incorporated company, who issue scrip or shares, shall, within ninety days after the passage of this act, file with the secretary of State a list of the number of shares issued by said corporation, and the names of the owners thereof, with the number of shares owned by each; and annually thereafter shall file with said secretary of State, on or before the first day of January, in each and every year a statement similar to that above required, showing the ownership of the shares of said corporation at the day of the date of said statement; all of which statements, including the first, shall be made by one of the officers of said company, under oath.

See § 4883.

§ 9352. In case any of said incorporated companies shall fail so to make such primary or such annual statements as are above required, they shall be liable to pay a fine of not more than five hundred dollars for any such violation of this law, which may be recovered in the name of the people of the State of Michigan, in any court of record, and when so collected shall be paid into the township treasury of the town or city where such corporation is located, for the benefit of the primary school fund of said town or city.

§ 9354f. If it shall be unlawful for any corporation, association, firm, copartnership or person to keep, or cause to be kept by

any agent or employe, within this State, any office, store or other place, wherein is conducted or permitted the pretended buying or selling of the shares of stocks or bonds of any corporation, or petroleum, cotton, grain, provisions or other produce, either on margins or otherwise, without any intention of receiving and paying for the property so bought or delivering the property so sold; or wherein is conducted or permitted the pretended buying or selling of such property on margins. when the party selling the same or offering to sell the same does not have the property on hand to deliver upon such sale; or when the party buying any of such property, or offering to buy the same, does not intend actually to receive the same if purchased or to deliver the same if sold; all such acts, and all purchases and sales, or contracts and agreements for the purchase and sale of any of the property aforesaid in manner aforesaid, and all offers to sell the same or to purchase the same in manner aforesaid, as well as all transactions in stocks, bonds, petroleum, cotton, grains and provisions in the manner as aforesaid, on margins for future or optional delivery, are hereby declared gambling and criminal acts, whether the person buying or selling, or offering to buy or sell, acts for himself or as an agent, employe or broker for any firm, copartnership, company, corporation, association or broker's office.

See § 4161b7, and cross-references.

§ 9354g. It shall be the duty of every commission merchant, firm, copartnership, association, corporation or broker doing business as such, to furnish upon demand, to any customer or principal for whom such commission merchant, broker, firm, copartnership, corporation or association has executed any order for the actual purchase or sale of any of the commodities hereinbefore mentioned, either for immediate or future delivery, a written statement containing the names of the parties from whom any such property was bought or to whom it shall have been sold, as the case may be, the time when, the place where and the price at which the same was either bought or sold; and in case such commission merchant, broker, firm, copartnership, corporation or association shall refuse promptly to furnish such statement upon reasonable demand, the fact of such refusal shall be prima facie evidence that such property was not sold or bought in a legitimate manner upon the open market.

§ 9354h. Any person who shall knowingly permit any of the acts set forth in section one\* of this act in his building, house, or in any outhouse, booth, arbor or erection of which he had the title, care or possession, shall be fined not to exceed the sum of one

\* § 9354f.



thousand dollars and costs of prosecution, and any penalty so adjudged shall be a lien upon the premises on or in which such unlawful acts are carried on or permitted, and any person whether acting for himself, or as a broker, agent or employe of any person, or as an officer, broker, agent or employe of any corporation, association, firm or copartnership, who shall be guilty of violating any of the provisions of section one\* of this act, shall, upon conviction thereof, be fined in a sum not less than one hundred dollars nor more than five hundred dollars and costs of prosecution; and if such person shall be guilty of a second offense under section one of this act,\* in addition to the penalty above prescribed, he shall, upon conviction thereof, be imprisoned in the county jail for the period of six months.

§ 9354j. All contracts, agreements, understandings and combinations made, entered into, or knowingly assented to, by and between any parties capable of making a contract or agreement which would be valid at law or in equity, the purpose or object or intent of which shall be to limit, control, or in any manner to restrict or regulate the amount of production or the quantity of any article or commodity to be raised or produced by mining, manufacture, agriculture or any other branch of business or labor, or to enhance, control or regulate the market price thereof, or in any manner to prevent or restrict free competition in the production or sale of any such article or commodity, shall be utterly illegal and void, and every such contract, agreement, understanding and combination shall constitute a criminal conspiracy. And every person who, for himself personally, or as a member, or in the name of a partnership, or as a member, agent or officer of a corporation, or of any association for business purposes of any kind, who shall enter into or knowingly consent to any such void and illegal contract, agreement, understanding or combination, shall be deemed a party to such conspiracy. And all parties so offending shall, on conviction thereof, be punished by fine of not less than fifty dollars, nor more than three hundred dollars, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment at the discretion of the court. And the prosecution for offenses under this section may be instituted and the trial had in any county where any of the conspirators became parties to such conspiracy, or in which any one of the conspirators shall reside: Provided, however, That this section shall in no manner invalidate or affect contracts for what is known and recognized at common law and in equity as contracts for the "good will of a trade or business;" but all such contracts shall be left to stand upon the same terms and within the same limi-

tations recognized at common law and in equity.

See Const., art. XIXA, § 2.

[A corporation organized to control the manufacture and sale of matches, its object being to stife competition and monopolize the business, is an unlawful combination. *Richardson v. Buhl*, 77 Mich. 632; s. c., 43 N. W. Rep. 1102.]

§ 9354k. Every contract, agreement, understanding, and combination declared void and illegal by the first section of this act\* shall be equally void and illegal within this State, whether made and entered into within or without this State.

§ 9354l. The carrying into effect, in whole or in part, of any such illegal contract, agreement, understanding or combination as mentioned in the first section of this act\* and every act which shall be done for that purpose by any of the parties or through their agency or the agency of any one of them, shall constitute a misdemeanor, and on conviction the offenders shall be punished by imprisonment in the State prison not more than one year, or in the county jail not more than six months, or by fine not less than one hundred nor more than five hundred dollars, or by both such fine and imprisonment in the discretion of the court.

§ 9354m. Any corporation now or hereafter organized under the laws of this State, which shall enter into any contract, agreement, understanding or combination declared illegal and criminal by the first section of this act,\* or shall do any act toward or for the purpose of carrying the same into effect in whole or in part, and who shall not within thirty days from the time when this act shall take effect, withdraw its assent thereto and repudiate the same and file in the office of the secretary of State such refusal and repudiation under its corporate seal, shall forfeit its charter and all its rights and franchises thereunder.

Forfeiture of charter, etc. § 4161d7, and cross-references.

§ 9354n. It shall be the duty of the attorney-general upon his own relation, or upon the relation of any private person, whenever he shall have good reasons to believe that the same can be established by proof, to file an information in the nature of a quo warranto against any corporation offending against any of the provisions of this act; and thereupon the same proceedings shall be had as provided by chapter two hundred ninety-eight of Howell's Annotated Statutes, relating to proceedings by information in the nature of a quo warranto against corporations offending against any of the provisions of the act or acts creating, alter-

\* § 9354f.

\* § 9354f.



ing or renewing such corporations, and in other cases.

See § 8635, and cross-references.

§ 9354o. The provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser, nor to the services of laborers or artisans who are formed into societies or organizations for the benefit and protection of their members.

§ 9354p. It shall be the duty of the secre-

tary of State to cause this act\* to be published for four successive weeks in some daily paper in each of the cities of Lansing, Detroit, Grand Rapids and Marquette, commencing within ten days after this act shall take effect, and he shall also within the same time cause to be mailed to each of the corporations whose articles of association are on file in his office, a printed copy of this act, with a notice calling special attention thereto.

As to publication of notices, see § 4161e3.

### LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO 1890.

1. To provide for action of ejectment, and for suits in equity to quiet title to real estate, against private business corporations whose term has expired.
2. To provide for payment of franchise fee.
3. To authorize foreclosure of mortgages and enforcement of liens against real estate of corporations whose term has expired.
4. To provide for proof of instruments executed by corporation under seal.
5. To protect employes against employers.
6. To provide for assessment and collection of taxes.
7. To authorize corporations to change their names.
8. To prohibit any corporation from discontinuing any factory, etc., without restoring gifts made to it.
9. To provide for proceedings in the nature of discovery.
10. To establish a law relative to acknowledgment of written instruments.
11. To provide for inspection of manufacturing establishments and to regulate employment of women therein.
12. To establish a law relating to the sealing of written instruments.
13. To prohibit corporations from requiring employes to procure insurance in any particular company.
14. To provide for admission of foreign corporation into Michigan.

#### Act 1.

AN ACT to provide for actions of ejectment, and for suits in equity to quiet title to real estate, against private business corporations whose term of existence has expired, and providing for substituted service upon such corporations therein.

Section 1. The People of the State of Michigan enact, That, notwithstanding the expiration of the term of private corporations organized for the conduct of business of any kind under the laws of this State, any one having such an interest in any land owned by such corporation while in existence, and which was not aliened by such corporation or divested from it by due process of law, as would entitle him to bring ejectment therefor, or to maintain a suit to quiet title thereto, may bring an action of ejectment for the recovery of the same, or file a bill in equity to quiet title thereto, in

the county or counties where such land lies. The declaration shall be against such corporation by its corporate name and against any occupant or occupants of such land as defendants, and the bill shall be against such corporation by its corporate name as defendant, and shall recite that the term of existence of the corporation defendant has expired; and the plaintiff or complainant, on filing such declaration and entering a rule to plead, or on filing such bill, as the case may be, may, on proof by affidavit made by himself or some one on his behalf, filed with the clerk of the court, setting forth the name of such corporation while in existence, the purpose of its organization, the statute of this State under which it was organized, and that its term of its existence and the time in addition thereto during which it might by law be permitted to sue or be sued has expired, have an order from the court in which the action or suit is brought, or from the judge thereof, for the appearance of such corporation defendant at some future day not less than three nor more than six months from the date thereof. Such order shall be published within twenty days from the date thereof once a week for six successive weeks in some newspaper published in such county, if one be published therein, and if not, in some other newspaper in an adjoining county, the newspaper to be designated in either case in the order. Thereupon and after the expiration of the time designated in such order for the appearance of the corporation defendant, if there shall be no appearance of any person or persons entitled to appear therein as hereinafter mentioned, the default of such defendant for want of plea may be entered, or, as the case may be, an order entered taking the bill as confessed against such defendant. Within the time fixed by such order, any person or persons who were stockholders of such corporation while it subsisted, and who still retain their rights in

\* §§ 9354j et seq.

## Franchise fee — Act, July 2, 1891.

the property in question by virtue of having owned stock therein, and any creditor or creditors of such corporation whose claims are subsisting and not barred by limitation of time, may appear and defend such action or suit as fully as such corporation could have done while subsisting: Provided, That all persons so appearing shall, before being admitted to plead to the declaration or bill of complaint, show to the satisfaction of the court or judge, by affidavit, their right to appear: And provided further, That such right may be drawn in question by the plaintiff or complainant on the trial or hearing of the cause, notwithstanding such previous showing. All persons so appearing shall plead together and in the name of the corporation. Such publication shall be full and complete service upon such corporation and upon all persons, natural or artificial, interested in said land because of having been stockholders in the corporation while subsisting, or creditors thereof. All persons so appearing and defending or seeking to defend shall be liable for costs in the action or suit as fully as such corporation would be if defending, and judgment or decree for costs may be had against them.

§ 2. The verdict and judgment in such ejectment and the decree in such suit shall be against the corporation in the corporate name and shall be binding upon it and upon all persons claiming said land by virtue of their stock in or demands upon the same, and shall be conclusive against such corporation and such persons, subject only to such exceptions as are or may be provided by general statute in other cases of ejectment or of suit to quiet title. Any judgment or decree in favor of the defendant corporation shall enure to the benefit of the persons entitled to the property in dispute. The plaintiff in such ejectment shall have judgment against such corporation defendant neither for money damages of any kind nor for costs of suit subject to the discretion of the court, nor shall he be entitled to file against it a suggestion of damages in continuation of such judgment; and the complainant shall have a decree against such corporation only for a release to the complainant of all claim to the land in dispute.

(Approved May 29, 1891.)

See § 4860, subd. 1, and cross-references.

## Act 2.

AN ACT to provide for the payment of a franchise fee by corporations.

Section 1. (As amended May 13, 1893.) The People of the State of Michigan enact, That every corporation or association here-

after incorporated or formed by consolidation or otherwise, by or under any general or special law of this State, which is required by law to file articles of association with the secretary of State and every foreign corporation or association which shall hereafter be permitted to transact business in this State, which shall not, prior to the passage of this act, have filed or recorded its articles of association under the laws of this State and been thereby authorized to do business therein, shall pay to the secretary of State a "franchise fee of one-half of one mill upon each dollar of the authorized capital stock of such corporation, or association, and a proportionate fee upon any and each subsequent increase thereof; and that every corporation heretofore organized or doing business in this State which shall hereafter increase the amount of its authorized capital stock, shall pay a franchise fee of one-half of one mill upon each dollar of such increase of authorized capital stock of such corporation or association, and a proportionate fee upon any and each subsequent increase thereof: Provided, That the fee herein provided, except in cases of increase of capital stock, shall in no case be less than five dollars; and in case any corporation or association hereafter incorporated under the law of this State, or foreign corporation authorized to do business in this State has no authorized capital stock, then in such case each and every corporation or association so incorporated or doing business in this State shall pay a franchise fee of five dollars. All contracts made in this State after the first day of January, eighteen hundred ninety-four, by any corporation which has not first complied with the provisions of this act shall be wholly void.

2. The secretary of State shall not receive for filing or record the articles of association of any corporation or association unless accompanied by the fee provided for in this act.

§ 3. The fees collected under the provisions of this act shall be paid into the State treasury and placed to the credit of the general fund.

§ 4. (Added by Law of April 24, 1895.) All corporations whose term of corporate existence, as fixed by their articles of association, shall have expired or shall be about to expire by limitation, and who shall renew such corporate existence. In accordance with law, shall, for the purpose contemplated by this act, be treated and regarded as new corporations, and shall be required to pay the fee provided by this act.

This act is ordered to take immediate effect.

(Approved July 2, 1891.)

See §§ 4161a8, 4161b8.



Foreclosure; protection of labor — Acts, July 3, 1891, May, 31, 1893, June 1, 1893.

### Act 3.

AN ACT to authorize and validate proceedings for the foreclosure of mortgages and the enforcement of liens and incumbrances against the real estate of private corporations whose term of existence has expired by limitation.

Section 1. The People of the State of Michigan enact, That whenever the term of existence of any private corporation organized under the laws of this State shall hereafter expire, or shall have heretofore expired, by limitation, under the terms of its articles of incorporation, leaving any mortgage, lien or incumbrance upon its real estate, upon which there shall remain any sum owing and unpaid, it shall be lawful for the holder or owner thereof to file his bill in the circuit court in chancery, in the county where said real estate, or some portion thereof, is situate, for the foreclosure of such mortgage, or the enforcement of such lien or incumbrance, and proceed therein to a final decree and sale, the same, and with the same force and effect, as though the term of the corporate existence of said corporation had not expired: Provided, The complainant shall make the corporation and all the stockholders thereof, as far as known, defendants to said bill.

§ 2. After the filing of a bill of complaint in such case, a subpoena may issue and be served upon such corporation, by serving a copy of such subpoena upon the last president, vice-president, secretary or treasurer of said corporation, if found within this State, and if no such officer shall be found in this State, on satisfactory proof by affidavit that [none of said officers can be found in this State, or that] none of them reside therein, the circuit judge of the court in which said suit or proceeding shall have been or shall hereafter be commenced, shall have full power and authority to make an order for the appearance of such defendant corporation at a day therein to be specified, in like manner as is provided by law for the bringing in of non-resident [defendants] defendant in courts of chancery and all the provisions [of] by law governing the practice of courts of chancery relative to the publication of such notice and the subsequent proceedings thereunder shall apply to and govern proceedings had under the provisions of this act and absent or non-resident stockholders made defendants in such suit or proceedings may be brought in in like manner.

§ 3. All other proceedings in such matter shall be according to the usual rules and practice of courts of chancery in this State, and the final decree and sale, if any, shall have the same force and effect as in ordinary foreclosure proceedings in chancery,

This act is ordered to take immediate effect.

(Approved July 3, 1891.)

See § 4161b3, and cross-references.

### Act 4.

AN ACT to provide for the proof of instruments purporting to be executed by any corporation, joint-stock company or partnership association, limited, foreign or domestic, under its common seal.

Section 1. The People of the State of Michigan enact, That any corporation, joint-stock company, or partnership association, limited, may have a common seal which it may alter at pleasure, and that such seal affixed to any instrument purporting to be executed by any such corporation, joint-stock company or partnership association, limited, foreign or domestic, shall be prima facie proof of the due adoption of said seal, and that it was affixed to said instrument by due authority, and that said instrument was in fact lawfully executed by such corporation, joint-stock company or partnership association, limited.

(Approved May 31, 1893.)

See § 4860, subd. 2.

### Act 5.

AN ACT to protect toilers against unjust demands of employers of labor; to give redress to employes discharged in certain cases, and to punish employers, their agents, clerks and servants for any violation of this act.

Section 1. The People of the State of Michigan enact, That it shall be unlawful for any employer of labor, by himself, his agent, clerk or servant to require any employe, or person seeking employment, as a condition of such employment, or continuance therein, to make and enter into any contract, oral or written, whereby such employe or applicant for employment shall agree to contribute directly or indirectly to any fund for charitable, social or beneficial purpose or purposes.

§ 2. It shall be unlawful for any such employer, by himself, his agent, clerk or servant, to deduct from the wages of any employe, directly or indirectly, any part thereof without the full and free consent of such employe, obtained without intimidation or fear of discharge for refusal to permit such deduction.

§ 3. If the employer be a firm or corporation, each and every member of said firm, and each and every managing officer of the corporation, shall be liable to punishment under this act; and any clerk, servant or agent of any such employer who shall do or attempt to do any act forbidden by this act, shall be equally liable with his employer or



## Taxation — Act, June 1, 1893.

employers as principal, for any such violation of this act.

§ 4. Any person who shall violate any provision of the first three sections of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty-five dollars and not more than one hundred dollars, or by imprisonment in the county jail for a period of not less than ten nor more than ninety days for each offense.

(Approved June 1, 1893.)

## Act 6.

AN ACT to provide for the assessment of property and the levy [and collection] of taxes thereon, and for the collection of taxes heretofore and hereafter levied, etc.

Section 1. The People of the State of Michigan enact, That all property, real and personal, within the jurisdiction of this State, not expressly exempted, shall be subject to taxation.

§ 2. For the purpose of taxation, real property shall include all lands within the State, and all buildings and fixtures thereon, and appurtenances thereto, except such as are expressly exempted by law.

§ 5. The real property of a corporation shall be assessed to the name of the corporation as to an individual, if known, in the township or place where situated, or it may be assessed to the occupant or to any authorized agent if so requested of the supervisor.

§ 7. The following real property shall be exempt from taxation:

\* \* \* \* \*

(8.) The real property of corporations exempt under the laws of this State, by reason of paying specific taxes in lieu of all other taxes for the support of the State: Provided, The track, right of way, depot grounds and buildings, machine shops, rolling stock, and all other property necessarily used in operating any railroad in this State belonging to any railroad company, shall henceforth remain exempt from taxation for any purpose, except that the same shall be subject to special assessments for local improvements in cities and villages, and all lands owned or claimed by any such railroad company not adjoining the track of such company, shall be subject to all taxes.

§ 8. For the purposes of taxation, personal property shall include:

\* \* \* \* \*

(7.) All shares in corporations organized under the laws of this State, when the property of such corporations is not exempt, or is not taxable to itself; or when the personal property is not taxed.

(8.) All shares in banks organized within this State, under the laws of this State or of the United States, at their cash value,

after deducting the assessed value of real property owned by and assessed to such banks.

(9.) All shares in foreign corporations, except national banks, owned by citizens of this State.

§ 11. (As amended May 31, 1895.) All corporate property, except where some other provision is made by law, shall be assessed to the corporation as to a natural person, in the name of the corporation. The place where its office is located in its articles of incorporation shall be deemed its residence: Provided, Its business is actually transacted at such office; but if it shall establish its principal office in any other place than the place named in its articles of incorporation, then the place where it transacts its principal business shall be deemed its residence for all the purposes of this act. If there be no principal office in this State, then at the place in this State where such corporation or agent transacts business: Provided further, That all the personal property of all corporations heretofore or hereafter organized under the laws of this State for the purpose of engaging in maritime commerce or navigation shall be assessed only in the city, village or township which is stated in their original articles of association or in any amendment thereof heretofore or hereafter made, to be the location of their general office for business. The property of corporations paying specific taxes shall be exempt, as to the property, covered by such taxation, except when otherwise provided by law. All other property of such corporation shall be taxed under this act. In computing the taxable property of insurance companies organized under the laws of this State, the value of the real property on which a company pays taxes shall be deducted from its net assets above liabilities, as determined and shown by the last report of the commissioner of insurance, and the remainder shall be the amount of personal property for which the company shall be assessed.

§ 19. In taking such assessment the supervisor or assessor shall use one of the following blank forms, as may be necessary:

\* \* \* \* \*

Property of companies.—The president, secretary or principal accounting officer of any company or association, incorporated or unincorporated, except railroad, insurance and telegraph companies and banking corporations, the taxation of which is specifically provided for by law, shall make out and deliver to the assessor a sworn statement setting forth the following:

1. The name and location of the company, corporation or association.

2. The amount of capital stock authorized and the number of shares into which the same is divided.

3. The amount of capital actually paid in.

4. The market value of the stock, or if

they have no market value then the actual value of the shares of stock.

5. The cash value of all of its personal property, giving each kind separately as far as practicable.

6. The total of all bona fide indebtedness, except indebtedness for current expenses, excluding from such expenses all amounts paid for the purchase or betterment of said property.

7. The description and value of all real property.

The amount of the seventh item shall be deducted from the amount of the fourth item, and the balance, if any, assessed as the cash value of the personal estate. The amount of the sixth item shall be deducted from the amount of the fifth item, and the balance, if any, assessed as personal.

\* \* \* \* \*

#### Personal Property — Chattels.

1. All shares in banks organized in this State under any law of this State or of the United States, and their cash value after deducting the value of the real estate taxed to banks.

2. All shares in foreign corporations, except national banks, and their cash value.

3. All shares in other corporations organized under the laws of this State when the property of such corporation is not exempt, or is not taxable to itself, and their cash value.

§ 120. (As amended May 18, 1895.) The cashier of every bank, the capital of which is represented by shares of stock, shall, on the second Monday of April in each year, file in the office of the county clerk of the county where the bank is located, a list of the names of the stockholders, the amount of stock held by each on the day said report is made, and their respective residences. Immediately after the filing of such statement the county clerk shall notify the supervisor of each township of the name of each person, if any, residing in his township, holding shares of stock in any such bank, and of the amount thereof as shown by such statement. If the cashier of any bank shall willfully neglect or refuse to make and file in the office of the county clerk, a list of the names of stockholders, the amount of stock held by each and their respective residences, as provided in this act, or shall willfully make and file any false entry in any such list, he shall be guilty of a misdemeanor, and upon conviction he shall be punished by fine not exceeding five hundred dollars or by imprisonment in the county jail not to exceed a period of six months, or by both such fine and imprisonment in the discretion of the court. If the president, secretary or

chief accounting officer of any corporation, company or association, or any representative thereof, shall willfully neglect or refuse, or shall make and verify any false statement to any assessing officer, the intention or effect of which may be to escape taxation, such person shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment in the county jail not to exceed a period of six months, or by both such fine and imprisonment in the discretion of the court. And any person who shall willfully make and verify any such statement with the effect or intention to evade taxation, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed three hundred dollars, or by imprisonment in the county jail not to exceed a period of six months or by both such fine and imprisonment in the discretion of the court.

This act is ordered to take effect June 12, 1893.

(Approved June 1, 1893.)

Stock deemed personal property. § 4161b5. Corporations liable to taxation. § 4161d, and cross-references.

#### Act 7.

AN ACT to authorize any corporation organized under the laws of the State of Michigan to change its name.

Section 1. The People of the State of Michigan enact, That where no other provision is especially made, any corporation heretofore or hereafter organized under the laws of this State may amend its articles of association by the adoption of a new name for such corporation, by a vote of not less than two-thirds in interest of all its stockholders, but before it shall commence any business under its amended articles, the said corporation shall cause such amendment or amendments, subscribed by at least two-thirds in interest of all its stockholders, and certified by its president, to be filed or recorded, as the case may be, in the same manner as is provided for in its original articles of incorporation, and when so recorded, such amendment or amendments shall become a part of the articles of incorporation of such company: Provided, however, No two corporations shall assume the same name, nor a name that shall be so similar as to be liable to mislead.

This act is ordered to take immediate effect.

(Approved May 11, 1895.)

See § 4161a1. Amendment of articles. § 4161b6.



## Removal of factory, etc.—Act, May 15, 1895.

## Act 8.

AN ACT to make it unlawful for any company or corporation to remove, abandon or discontinue any factory, workshop, machine-shop, repair-shop, office, agency or establishment, or the work, business or industry carried on therein from any village, city, town or place within this State, without repaying and restoring to such town, city, village or place any and all money, bonds, land and other property, with interest, which have been or may hereafter be given or granted as a consideration or inducement for the location, construction, operation, enlargement or maintenance at any such city, village, town or place, and to provide a remedy by injunction to restrain any such company or corporation from moving, abandoning or discontinuing any such factory, shop, etc., and to provide a penalty for so doing.

Section 1. The People of the State of Michigan enact, That it shall be unlawful for any corporation or company doing business in this State at any time, or for the officers, agents or others having control of the corporation or company or of the business or property of such corporation or company, to move, abandon, or discontinue, in any way, to any material extent, any factory, workshop, machine-shop, repair-shop, office, agency, or other establishment, or the work or business carried on therein, from any city, town or other place within this State, without repaying and restoring any and all money, bonds, lands and other property, which have been, or shall hereafter be given or granted as a consideration or inducement for the location or construction, operation, enlargement or maintenance at any such city, town or place, of such factory, workshop, machine-shop, repair-shop, office, agency or establishment, or of the work or business carried on thereat; and such payment or restoration must include and be accompanied by the payment of lawful interest on such money, bonds, lands and other property, or upon the proceeds or reasonable profits thereof, for the full period that shall have elapsed between the date of the original gift and such final payment and restoration.

§ 2. The provisions and penalties shall apply in all cases where the gift or grant was or shall be made by any city, town, company, person or persons, and they shall apply in all cases where the gift, grant, consideration or inducement, was made or paid to the corporation or company owning or operating such factory, workshop, machine-shop, repair-shop, office, agency, or establishment, and shall apply as well in all cases where such gift, grant, consideration or inducement, was made or paid to any officer, agent, receiver or trustee of such corporation or com-

pany, or at any time in control of the property or business of the corporation or company; and the provisions and penalties of this act shall apply also if the corporation or company has succeeded to the rights, franchises, property or business of any corporation or company, to which or the officers, agents, receivers or trustees of which company or corporation, or of its property, any such gift, grant, consideration or inducement, was or shall have been made or paid.

§ 3. The violation of any of the provisions of this act by any corporation or company, or any shareholder, officer or agent of any corporation or company, or by any person or persons succeeding to or controlling or managing the property or business of such corporation or company, is hereby made a misdemeanor, to be punished by fines, penalties, forfeitures, injunctions and imprisonments, as provided in other sections of this act.

§ 4. Any shareholder, officer, agent or other person violating any of the provisions of this act shall be punished by imprisonment for not more than one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment; any corporation or company violating any of the provisions of this act shall be punished by a fine of one thousand dollars for each day that shall elapse between such act of removal, abandonment or discontinuation, and the repayment and restoration required by this act; and any such corporation or company found guilty of violating any of the provisions of this act shall also forfeit all rights or franchises derived from or enjoyed within this State, and shall be enjoined from transacting any business within the State.

§ 5. The repayments and restorations required by this act shall be made to the city, town, company, person or persons, by which or from whom the gift, grant, consideration or inducement, was made or paid, or to their successors, assigns or legal representatives.

§ 6. The forfeitures and injunctions provided for in this act may be decreed and enforced by any circuit court of any county in which any such corporation or company may do business, in a suit to be instituted for the purpose, in the name of the State of Michigan, by the prosecuting attorney of the county in which such suit is prosecuted: Provided, That in case of the suspension of any such business on account of the financial failure of any such company or corporation (other than railroad corporations) the person, city, village or town having so contributed any money, bonds, lands or other property shall become and be creditors of such company or corporation to the amount and value of such bonds, money or other property so contributed, and shall be treated and have all the rights of other creditors of such company or corporation; and such com-



## Discovery of assets — Act, May 22, 1895.

pany or corporation, its shareholders, officers or agents, shall not be liable to the penalties herein provided: Provided further, That the provisions of this act shall not apply to any corporation or company having received any bonds, money, lands or other property as a consideration or inducement for the erection or construction, operation, enlargement or maintenance of any factory, workshop, machine-shop, office, agency or establishment at any city, town or place for a specified length of time and having fully complied with all the conditions of the contract and agreement under which such bonds, money, lands or other property was given such company or corporation.

(Approved May 15, 1895.)

See § 4161b7, and cross-references.

### Act 9.

AN ACT to provide for proceedings in the nature of proceedings for discovery in actions or proceedings commenced in any of the courts of record of this State, and to provide for the examination of parties to such proceedings, and to compel the production of books and papers.

Section 1. The People of the State of Michigan enact, That in all proceedings and actions heretofore commenced or hereafter to be commenced, in any of the courts of record of this State, the testimony of a party, or in case a corporation be a party, the testimony of the president, secretary or other principal officer or general managing agent of such corporation, otherwise than as a witness on a trial, may be taken by deposition at the instance of the adverse party, at any time after the commencement thereof and before judgment. Such deposition shall be taken before a judge at chambers, or a circuit court commissioner on a previous notice to such party and any other adverse party or their respective attorneys of at least five days; or it may be taken without the State upon commission in the manner provided for taking other depositions. The attendance of the party to be examined may be compelled upon subpoena and the payment or tender of his fees as witness, at the rates provided for in courts of record of this State; and such examination shall be subject to the same rules as that of any other witness, but he shall not be compelled to disclose any thing not relevant to the controversy. If such testimony shall be taken before the issue joined on the part of plaintiff, the notice of taking the same shall be accompanied by an affidavit of the plaintiff, his agent or attorney, stating the original nature and object of the action; that discovery is sought to enable the party to plead and the points upon which such discovery is desired, and such examination shall be limited to the discovery of the facts relevant to the points

so stated, unless the court or presiding judge thereof, or such circuit court commissioner, on motion and one day's notice shall, before the examination is begun, by order further limit the subjects to which such examination shall extend, but such examination shall not preclude the right to another examination after issue joined, upon all the issues in the case, and the party examining shall, in all cases, be allowed to examine upon oral interrogatories. Such examination shall not be compelled in any other county than that in which the party to be examined resides: Provided, That whenever plaintiff or defendant is a non-resident of the State, his deposition may be had under the provisions of this section in the county in which the action is pending, if he can be personally served with notice and subpoena in such county. In any examination under the provisions of this section, the judge or circuit court commissioner before whom the same is had shall have power and authority to compel the party examined to answer all questions relevant to the issues involved, and also to compel the production by the party examined of books and papers relevant and pertinent to the issues, and may enforce such answers and the production of such books and papers by contempt proceedings.

§ 2. The deposition taken pursuant to the provisions of the foregoing section may, at the option of the party taking the same, be used as evidence at the trial of the cause or proceeding in which the same is taken.

§ 3. If any party lawfully required to appear and testify as provided in the foregoing sections, either within or without this State, shall neglect or refuse so to do, or to produce any books and papers lawfully required of him pursuant to the foregoing provisions, he may be punished as for a contempt, and his pleadings be stricken out and judgment given against him as upon default or failure to plead.

§ 4. The testimony of a party so taken by deposition at the instance of the adverse party, if used on the trial of such proceeding or cause, may be rebutted by other testimony the same as though it had been taken by the party giving the same in his own behalf.

§ 5. In any suit or proceeding prosecuted in the name of an assignee, the assignor of any such claim or right of action may be examined in the same manner and subject to the same rules of examination as if he were named as a party.

§ 6. The testimony of a person for whose immediate benefit the action is prosecuted or defended, although such person be not a party to such action, may be taken under the provisions of this act at the instance of the adverse party in the same manner, subject to the same rules of examination and

## Acknowledgment; factory inspection — Acts, May 22, 1895.

with like effect as if such person were named as a party to said action.

(Approved May 22, 1895.)

See § 4860, subd. 1, and cross-references. Discovery by corporation. § 8168.

## Act 10.

AN ACT to establish a law uniform with the laws of other States relative to acknowledgment of written instruments.

Section 1. The People of the State of Michigan enact, That either the forms of acknowledgment now in use in this State, or the following, may be used in the case of conveyance or other written instruments, whenever such acknowledgment is required or authorized by law for any purpose.

Begin in all cases by a caption specifying the State and place where the acknowledgment is taken.

\* \* \* \* \*

3. In case of corporations or joint-stock associations: On this ..... day of ..... 18.., before me appeared A B., to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent of the corporation or association) of (describing the corporation or association), and that the seal affixed to said instrument is the corporate seal of said corporation (or association), and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or trustees), and said A. B. acknowledged said instrument to be the free act and deed of said corporation (or association).

In case the corporation or association has no corporate seal omit the words "the seal affixed to said instrument is the corporate seal of said corporation (or association), and that," and add, at the end of the affidavit clause, the words "and that said corporation (or association) has no corporate seal."

In all cases add signature and title of the officer taking the acknowledgment.

§ 7. Section five of act one hundred eighty-seven of the laws of eighteen hundred eighty-one, approved June first, eighteen hundred eighty-one, the same being section fifty-seven hundred thirty-two of Howell's Annotated Statutes is hereby repealed.

(Approved May 22, 1895.)

See § 416149.

## Act 11.

AN ACT to provide for the inspection of all manufacturing establishments and workshops in this State, and to provide for the enforcement, regulation and inspection of such establishments, and the employment of women and children therein.

Section 1. The People of the State of Michigan enact, That no male under the age of

eighteen and no female under the age of twenty-one years, shall be employed in any manufacturing establishment in this State for any longer period than sixty hours in one week unless for the purpose of making necessary repairs to machinery in order to avoid the stoppage of the ordinary running of the establishment: Provided, That no more than ten hours shall be exacted from such male minors or females under twenty-one years on any day unless for the purpose of making a shorter work day on the last day of the week.

§ 2. (As amended April 24, 1897.) No child under fourteen years of age shall be employed in any manufacturing establishment within this State. It shall be the duty of every person employing children to keep a register, in which shall be recorded the name, birth-place, age and place of residence of every person employed by him under the age of sixteen years; and it shall be unlawful for any manufacturing establishment to hire or employ any child under the age of sixteen years without there is first provided and placed on file a (sworn) statement in writing made by the parent or guardian, stating the age, date and place of birth of said child. If said child have no parent or guardian, then such statement shall be made by the child, which statement shall be kept on file by the employer, and which said register and statement shall be produced for inspection on demand made by any factory inspector appointed under this act.

§ 3. No child under the age of sixteen years shall be employed by any person, firm or corporation conducting any manufacturing establishment in this State, at employment whereby its life or limb is endangered, or its health is likely to be injured or its morals may be depraved by such employment. No female under the age of twenty-one years and no male under the age of eighteen years shall be allowed to clean machinery while in motion.

§ 4. Factory inspectors shall have power to demand a certificate of physical fitness from the county physician who shall make such examination free of charge, in the case of persons who seem physically unable to perform the labor at which they may be employed, and shall have power to prohibit the employment of any person that cannot obtain such certificate: Provided, This section shall not apply except to children under sixteen years of age.

§ 5. (As amended April 24, 1897.) It shall be the duty of the owner, agent or lessee of any manufacturing establishment where hoisting shafts or well-holes are used to cause the same to be properly enclosed and secured. It shall also be the duty of the agent, owner or lessee to provide or cause to be provided at all elevator openings such proper trap or automatic doors or automatic gates so constructed as to open and close by the action of the elevator either ascending



or descending. (The factory inspector, assistant factory inspector and deputy factory inspectors shall inspect the cables, gearing or other apparatus of elevators in manufacturing establishments at least once each year, and more frequently, if necessary, and require that the same be kept in a safe condition) and secured. It shall also be the duty of the agent, owner or lessee to provide or cause to be provided at all elevator openings such proper trap or automatic doors or automatic gates so constructed as to open and close by the action of the elevator either ascending or descending.

§ 6. Fire-escapes shall be provided for all manufacturing establishments two or more stories in height, if, in the opinion of the factory inspector, it is necessary to insure the safety of the persons employed in such establishments, said fire-escapes or means of egress, or as many thereof as may be deemed sufficient by the inspector shall be provided, and where it is necessary to provide fire-escapes on the outside of such establishments, they shall consist of landings or balconies at each floor above the first, to be built according to specifications approved by the factory inspector. The windows or doors leading to all fire-escapes shall open outwardly, or upwardly when provided with a counter balancing weight, said windows or doors to be not less than thirty-six inches in height and thirty inches in width. All fire-escapes shall be located as far as possible, consistent with accessibility, from the stairways and elevator hatchways or openings; and the ladder thereof shall extend to the roof; stationary stairs or ladders shall be provided on the inside from the upper story to the roof, as a means of escape in case of fire. Signs indicating the way to fire-escapes shall be placed in conspicuous places. Factory inspectors shall in writing notify the owner, agent or lessee of such manufacturing establishment of the required location and specifications of such fire-escapes as may be ordered.

§ 7. Proper and substantial hand-rails shall be provided on all stairways in manufacturing establishments, and where in the opinion of the factory inspector it is necessary, the steps of such stairs in all such establishments shall be substantially covered with rubber securely fastened thereon for the better safety of persons employed in said establishments. The stairs shall be properly screened at sides and bottom where females are employed, and where practicable the doors of such establishments shall swing outwardly or slide as ordered by said factory inspector, and shall be neither locked, bolted or fastened during working hours.

§ 8. It shall also be the duty of the owner of such factory, or his agent, superintendent or other person in charge of the same, to furnish or supply, or cause to be furnished or supplied, in the discretion of the factory inspector, where machinery is in use, proper

shifters or other mechanical contrivances for the purpose of throwing belts on or off pulleys. All gearing or belting shall be provided with proper safeguards, and wherever possible, machinery shall be provided with loose pulleys. All vats, saws, pans, planers, cogs, set-screws, gearing and machinery of every description shall be properly guarded, when deemed necessary by the factory inspector.

§ 9. Exhaust fans shall be provided for the purpose of carrying off dust from emery wheels and grindstones, and dust creating machinery, wherever deemed necessary by the factory inspector.

§ 10. (As amended April 24, 1897.) Every factory in which five or more persons are employed and every factory or workshop in which two or more children, young persons or women are employed shall be (supplied with proper wash and dressing rooms, and) kept in a cleanly state and free from effluvia arising from any drain, privy or other nuisance, and shall be provided within reasonable access with a sufficient number of proper water closets, earth closets or privies, for the reasonable use of the persons employed therein; and whenever two or more male persons and (one) or more female persons are employed as aforesaid, a sufficient number of (separate) separate and distinct water closets, earth closets or privies shall be provided for the use of each sex, and plainly so designated, and no person shall be allowed to use any such closet or privy assigned to persons of the other sex.

§ 11. Not less than forty-five minutes shall be allowed for the noonday meal in any manufacturing establishment in this State. Factory inspectors shall have power to issue written permits in special cases, allowing a shorter meal time at noon, and such permit must be conspicuously posted in the main entrance of the establishment, and such permit may be revoked at any time the inspector deems necessary, and shall only be given where good cause can be shown.

§ 12. The commissioner of labor, deputy commissioner of labor and deputy factory inspectors shall be factory inspectors in the meaning of this act, and are hereby empowered to visit and inspect at all reasonable hours, and as often as practicable or required, the factories, workshops and other manufacturing establishments in the State, where the manufacture of goods is carried on. Deputy factory inspectors shall report to the commissioner of labor of this State at such time and manner as he may require. It shall also be the special duty of factory inspectors to enforce all the provisions of this act, and to prosecute for all violations of the same, before any magistrate or in any court of competent jurisdiction in this State.

§ 13. Deputy factory inspectors shall make a report to the commissioner of labor of each factory visited and inspected by them, which report shall be kept on file in the office of the commissioners. Deputy factory inspect-



Factory inspection; sealing deeds, etc.—Acts, May 22 and 23, 1895.

ors shall have the same power to administer oaths as is now given to notaries public, in cases where persons desire to verify documents connected with the proper enforcement of this act.

§ 14. (As amended April 24, 1897.) (Sections one, two and three of this act shall not apply) to canning factories or evaporating works, but shall apply to any other place where goods, wares or products are manufactured, repaired, cleaned or sorted in whole or in part; but no other person, persons or (corporation) corporations employing less than five persons or children, excepting in any of the cities of this State, shall be deemed a manufacturing establishment within the meaning of this act.

§ 15. For the purpose of carrying out the provisions of this act, the commissioner of labor is hereby authorized and required to cause, at least, an annual inspection of the manufacturing establishments or factories in this State. Such inspection may be by the commissioner of labor, the deputy commissioner of labor, or such other persons as may be appointed by the commissioner of labor for the purpose of making such inspection. Such persons shall be under the control and direction of the commissioner of labor and are specially charged with the duties imposed, and shall receive such compensation as shall be fixed by the commissioner of labor, not to exceed three dollars per day, together with all necessary expenses. All compensation for services and expenses provided for in this act shall be paid by the State treasurer upon the warrant of the auditor-general: Provided, That not more than eight thousand dollars shall be expended in such inspection in any one year: And provided further, That the commissioner of labor shall present to the governor on or before the first day of February, eighteen hundred ninety-six, and annually thereafter, a report of such inspection, with such recommendations as may seem necessary: And provided further, That in addition to the above allowance for expenses, there may be printed not to exceed two thousand copies of such reports for the use of the labor bureau, for general distribution. And all printing, binding, blanks, stationery, supplies or map work shall be done under any contract which the State now has or shall have for similar work with any party or parties, and the expense thereof shall be audited and paid for in the same manner as other State printing.

§ 16. The prosecuting attorney of any county of this State is hereby authorized and required upon the complaint on oath of the commissioner of labor or factory inspectors, to prosecute to termination before any court of competent jurisdiction, in the name of the people of the State, actions or proceedings against any person or persons reported to him to have violated the provisions of this act.

§ 17. Any person who violates or omits

to comply with any of the foregoing provisions of this act, or who interferes in any manner with the factory inspector in the discharge of his duties, or who suffers or permits any child to be employed in violation of its provisions, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than five nor more than one hundred dollars, or by imprisonment for not less than ten nor more than ninety days, or by both such fine and imprisonment in the discretion of the court.

§ 18. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

This act ordered to take immediate effect. (Approved May 22, 1895.)

See Act of 1893, at p. 66; and Acts of 1895, at p. 73.

### Act 12.

AN ACT to establish a law uniform with the laws of other States relating to the sealing of deeds and other written instruments.

Section 1. The People of the State of Michigan enact, That in addition to the mode in which such instruments may now be executed in this State hereafter, all deeds and other instruments in writing executed by any person or by any private corporation, not having a corporate seal, and now required to be under seal shall be deemed in all respects to be sealed instruments, and shall be received in evidence as such, provided the word "seal" or the letters "L. S." are added in the place where the seal should be affixed.

§ 2. A seal of a court, public officer or corporation may be impressed directly upon the instrument or writing to be sealed, or upon wafer, wax, or other adhesive substance affixed thereto, or upon paper or other similar substance affixed thereto by mucilage or other adhesive substance. An instrument or writing, duly executed in the corporate name of a corporation, which shall not have adopted a corporate seal, by the proper officers of the corporation under any seal, shall be deemed to have been executed under the corporate seal.

(Approved May 23, 1895.)

See § 4860, subd. 2.

### Act 13.

AN ACT to prohibit corporations from requiring any of its employes to procure life or accident insurance in any particular company or companies, and to declare void all contracts hereafter made between any corporation and its employes providing for life or accident insurance by such employe in any particular company.

Section 1. The People of the State of Michigan enact, That it shall hereafter be unlaw-

Insurance of employes; admission of foreign corporations — Acts May 24 and June 5, 1895.

ful for any company or corporation doing business in this State or for any of the officers and agents of any such company or corporation, to require any of the employes of such company or corporation to take out or obtain a life, accident or life and accident policy in favor of such employe or other person in any particular or designated life, accident or life and accident company or association.

§ 2. All contracts hereinafter made between any such company or corporation and any employe of said company or corporation requiring or stipulating that the employe so contracting shall procure, obtain or have a policy of insurance in any particular or designated company or association shall be void: Provided, That nothing in the foregoing provisions of this act is intended to prohibit, or shall be construed as prohibiting the employers of labor and the persons employed from voluntarily making agreements with each other for contributions of money by the latter to any fund to be accumulated in their behalf and for their benefit in common with others, and in such case from further agreeing that the employer may deduct from their wages, from time to time, the sums due from them under such agreement.

§ 3. The violation of any of the provisions of this act is hereby made a misdemeanor, and any company or corporation violating any of the provisions of this act shall be punished by a fine of not more than two hundred dollars for each and every offense, and any shareholder, officer or agent of any company or corporation violating the provisions of this act shall be punished by imprisonment in the county jail not more than sixty days, or by a fine of not more than one hundred dollars for each offense, or both such fine and imprisonment at the discretion of the court.

This act is ordered to take immediate effect.

(Approved May 24, 1895.)

See Act of 1893, at p. 66.

#### Act 14.

AN ACT to provide for the admission of foreign corporations into the State of Michigan and to authorize such corporations to carry on their business in said State.

Section 1. The People of the State of Michigan enact, That when no other provision is specially made, corporations organized under the laws of any State of the United States, or of any foreign country, for any purpose or object for which a corporation may be formed under the laws of Michigan, upon filing in the office of the secretary of State a certified copy of their articles of incorporation, or memoranda of association and evidence and notices of appointment of an agent in this State for service of process, may for such purpose or object, carry on their business in this State, and shall enjoy all the rights and privileges and shall be subject to all the restrictions, requirements and liabilities of corporations of like character incorporated under Michigan statutes.

This act is ordered to take immediate effect.

(Approved June 5, 1895.)

See § 4161a8. How foreign corporation may carry on business. § 4161d6, and note.

[Above act does not apply to foreign corporations whose business within this State consists merely of selling through itinerant agents and delivering commodities manufactured outside of this State. *Coit v. Sutton*, 102 Mich. 324; s. c., 60 N. W. Rep. 690.

Service on the traveling salesman of a foreign corporation through whose agency its business was done in the state, held good. *Ryerson v. Steere*, 72 N. W. Rep. 131.]

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MINNESOTA.

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## SPECIAL ACTS PASSED SUBSEQUENTLY TO 1890.





# MINNESOTA.

## CONSTITUTION OF MINNESOTA — 1858.

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE I.

##### Bill of Rights.

- Sec. 11. Laws impairing the obligation of contracts, prohibited.  
13. Private property taken for public use to have just compensation.

#### ARTICLE IV.

##### Legislative Department.

- Sec. 32. In regard to railroads.  
33. The legislature is prohibited from enacting special or private laws in the following cases.  
34. General laws to be uniform in their operation.  
35. Combinations to influence the markets for food products declared a criminal conspiracy.

#### ARTICLE IX.

##### Finances of the State, Banks and Banking.

- Sec. 3. Laws shall be made taxing all moneys, etc.  
4. Laws shall be passed for taxing notes, bills, etc.  
10. The State shall never give or loan its credit.  
13. The legislature may pass a general banking law.

#### ARTICLE X.

##### Corporations Having no Banking Privileges.

- Sec. 1. Corporations defined.  
2. They shall not be formed under special acts.  
3. Stockholders shall be liable for what.  
4. Lands taken for public way shall have a fair compensation.

#### ARTICLE I.

##### Bill of Rights.

- § 11. No \* \* \* law impairing the obligation of contracts, shall ever be passed,  
\* \* \*

See § 2673.

§ 13. Private property shall not be taken for public use without just compensation therefor, first paid or secured.

See art. X, § 4. Corporations empowered to take property. § 2458.

#### ARTICLE IV.

##### Legislative Department.

§ 32. Any law providing for the repeal or amendment of any law or laws heretofore or hereafter enacted, which provides that any railroad company now existing in this State, or operating its road therein, or which may be hereafter organized, shall in lieu of all other taxes and assessments upon their real estate, roads, rolling stock and other personal property at and during the time and periods therein specified, pay into the treasury of this State a certain percentage therein mentioned of the gross earnings of such railroad companies now existing or hereafter organized, shall before the same shall take effect or be in force, be submitted to a vote of the people of the State, and be adopted and ratified by a majority of the electors of the State voting at the election at which the same shall be submitted to them.

§ 33. The legislature is prohibited from enacting any special or private laws in the following cases: \* \* \*

7th. For granting corporate powers or privileges, except to cities.

10th. For granting to any individual, association or corporation, except municipal, any special or exclusive privilege, immunity or franchise whatever.

But the legislature may repeal any existing special law relating to the foregoing subdivisions.

See art. X, § 2; art. IX, § 13.

[A corporation is not estopped, by acts of individual members or officers in procuring the passage of a statute, from objecting to its validity. *Boom Co. v. Prince*, 34 Minn. 79; s. c., 24 N. W. Rep. 361.]

Finances, etc.; corporations — Const., Art. iv, §§ 34, 35; Art. ix, §§ 3, 4, 10, 13; Art. x, §§ 1-3.

§ 34. The legislature shall provide general laws for the transaction of any business that may be prohibited by section (1)\* of this amendment, and all such laws shall be uniform in their operation throughout the State.

§ 35. Any combination of persons, either as individuals, or as members or officers of any corporation, to monopolize the markets for food products in this State, or to interfere with, or restrict the freedom of such markets, is hereby declared to be a criminal conspiracy, and shall be punished in such manner as the legislature may provide.

See Act of 1891. at p. 41.

### ARTICLE IX.

#### Finances of the State, Banks and Banking.

§ 3. Laws shall be passed taxing all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, \* \* \*

Property subject to taxation. § 1382.

§ 4. Laws shall be passed for taxing the notes and bills discounted or purchased, moneys loaned, and all other property, effects or dues of every description, of all banks, and of all bankers, so that all property employed in banking shall always be subject to a taxation equal to that imposed on the property of individuals.

§ 10. The credit of the State shall never be given or loaned in aid of any individual, association or corporation. \* \* \*

§ 13. The legislature may, by a two-thirds vote, pass a general banking law, with the following restrictions and requirements, viz.:

First. The legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments by any person, association or corporation issuing bank notes of any description.

Second. The legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money, and shall require ample security in United States stock or State stocks for the redemption of the same in specie; and in case of a depreciation of said stocks, or any part thereof, to the amount of ten per cent. or more on the dollar, the bank or banks owning said stocks shall be required to make up said deficiency by additional stocks.

Third. The stockholders in any corporation and joint-stock association for banking purposes issuing bank notes shall be individually liable in an amount equal to double the amount of stock owned by them for all

the debts of such corporation or association; and such individual liability shall continue for one year after any transfer or sale of stock by any stockholder or stockholders.

Fourth. In case of the insolvency of any bank or banking association, the bill-holders thereof shall be entitled to preference in payment over all other creditors of such bank or association.

Fifth. Any general banking law which may be passed in accordance with this article, shall provide for recording the names of all stockholders in such corporations, the amount of stock held by each, the time of transfer, and to whom transferred.

See art. IV, § 33.

### ARTICLE X.

#### Corporations Having no Banking Privileges.

Section 1. The term "corporations," as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers and privileges not possessed by individuals or partnerships, except such as embrace banking privileges; and all corporations shall have the right to sue, and shall be liable to be sued, in all courts in like manner as natural persons.

The term "person." § 1385.

§ 2. No corporation shall be formed under special acts, except for municipal purposes.

See art. IV, § 33; Gen. Stat. § 2638.

[See *McRoberts v. Washburne*, 10 Minn. 23; *Morton v. Power*, 33 id. 521; s. c., 24 N. W. Rep. 494; *R. R. Co. v. Parcher*, 14 Minn. 297; *Ames v. R. R. Co.*, 21 id. 241; *Cotton v. Boom Co.*, 22 id. 372; *State v. Clark*, 23 id. 422; *Ins. Co. v. Allis*, 24 id. 75; *Green v. Boom Co.*, 35 id. 155, for special acts which were held to be in conflict with above section.]

§ 3. Each stockholder in any corporation, (excepting those organized for the purpose of carrying on any kind of manufacturing or mechanical business) shall be liable to the amount of stock held or owned by him.

Individual liability. § 2455, and note; see §§ 5554 et seq. Enforcement by assignees and receivers. Act 20, at p. 48.

[Articles of Incorporation construed, and held that a corporation was not organized for a manufacturing business only, and that its stockholders were liable, to the amount of their stock, for the corporate debts. *Anchor Co. v. Electric Co.*, 63 N. W. Rep. 1109.

Above section does not affect the power of the legislature to make stockholders individually liable in a larger amount. *Allen v. Walsh*, 25 Minn. 543.

It does not merely make a stockholder liable for his stock at its face value, but imposes a liability to the amount of stock held, in addition to the



## Liability of stockholders; eminent domain — Const., Art. x, §§ 3, 4.

liability for the stock. *Willis v. Sanitation Co.*, 50 N. W. Rep. 1110.

The section is self-executing. *Id.*

Stockholders cannot exempt themselves from this constitutional rule or personal liability by organizing, in form, as a manufacturing corporation, when it is evident that the real object of the organization is the carrying on of business wholly foreign to manufacturing. *State v. Mfg. Co.*, 40 Minn. 213; s. c., 41 N. W. Rep. 1020; *Mohr v. Minn. El. Co.*, 40 Minn. 343; s. c., 41 N. W. Rep. 1074.

The exception in favor of manufacturing corporations embraces only those organized to carry on an exclusively manufacturing business; and if the purposes, as stated in the articles, are to carry on other kinds of business also, the fact that the corporation never actually engaged in such other kinds of business will not bring it within the exception referred to. *Arthur v. Willius*, 44 Minn. 409; s. c., 46 N. W. Rep. 851.

A corporation was organized for "the manufacture and sale of lime, \* \* \* together with the buying and selling of lime, hair, sand, cement, and like articles." The only business actually engaged in was the manufacture and sale of lime. Held, that the stockholders were liable for its debts under above section. *Densmore v. Shepard*, 46 Minn. 54; s. c., 48 N. W. Rep. 528, 681.

Stockholders of an insolvent trading corporation are severally liable for its debts to an amount equal to the face value of the stock though severally held. Liability is not limited to a pro rata share of the debts equal to their share of the whole stock. *Bank v. Plow Co.*, 58 Minn. 167; s. c., 59 N. W. Rep. 997.

A distilling company operating a distillery and buying and selling liquor held not an exclusively manufacturing company, and that its stockholders were liable for all debts to the amount of their stock. *Barrel Co. v. Distilling Co.*, 64 N. W. Rep. 1143.

The liability of a stockholder of a bank who has transferred his shares is limited to the debts created before the transfer. *Harper v. Carroll*, 64 N. W. Rep. 145.

Laws 1889, chapter 30, includes stockholders who are liable for the debts of a corporation which has been released by debtor in insolvency proceedings, under Const., art. X, § 3. *Willis v. Sanitation Co.*, 50 N. W. Rep. 1110.

Limitation of actions to enforce liability of stockholders. *Hospes v. Mfg. & Car Co.*, 59 N. W. Rep. 1117.

The mining of iron ore held a "mechanical business" within meaning of above section. *Cowling v. Zenith Iron Co.*, 68 N. W. Rep. 48.

A corporation organized to manufacture and deal in fertilizers held not organized for manufacturing exclusively, so as to exempt its stockholders under above section. *Bank v. Mfg. Co.*, 69 N. W. Rep. 217.

After a corporation assigns for the benefit of its creditors, a simple contract creditor may enforce the constitutional liability of the stockholders. *Sturtevant-Larrabee Co. v. Mast*, 69 N. W. Rep. 324.

Articles of defendant corporation construed, and held it was not organized for an exclusively mechanical business so as to exempt its stockholders from double liability. *Anderson v. Anderson Iron Co.*, 68 N. W. Rep. 49.

Fact that a manufacturing corporation engaged in some business not authorized by its articles did not render its stockholders liable for corporate debts. *Bank v. Frisk-Turner Co.*, 74 N. W. Rep. 160.

A corporation for the manufacture and sale of clothing, and for other business necessary thereto, held a corporation for manufacturing under above section. *Id.*

§ 4. Lands may be taken for public way, for the purpose of granting to any corporation the franchise of way for public use. In all cases, however, a fair and equitable compensation shall be paid for such land, and the damages arising from the taking of the same; but all corporations being common carriers, enjoying the right of way in pursuance of the provisions of this section, shall be bound to carry the mineral, agricultural and other productions or manufactures on equal and reasonable terms.

See art. I, § 13. Corporations empowered to take property. § 2458.

## GENERAL STATUTES OF MINNESOTA — 1891.

## CHAPTER XI.

## Taxes.

- Sec. 1382. Property subject to taxation.  
 1384. Personal property defined.  
 1385. "Person" includes corporation.

§ 1382. All real and personal property in this State, and all personal property of persons residing therein, the property of corporations now existing or hereafter created, and the property of all banks or banking companies now existing or hereafter created, and of all bankers; except such as is hereinafter expressly excepted, is subject to taxation, and such property, or the value thereof, shall be entered in the list of taxable property for that purpose, in the manner prescribed by this act; Provided, That railroad, insurance and telegraph companies, shall be taxed in such manner as now is or may be hereafter fixed by law.

See Const., art. IX, §§ 3, 4. Stock deemed personal property. § 2643.

[A railroad corporation is deemed to reside in any county in which it has an office, agent or place of business. *Schoch v. R. R. Co.*, 55 Minn. 479; s. c., 57 N. W. Rep. 208.]

A corporation is taxable where its principal place of business is situated, its power exercised, its plans formed, its meetings held and its seal kept. *State v. Boom Co.*, 49 Minn. 450; s. c., 52 N. W. Rep. 44.

A personal tax assessed against a corporation cannot be collected against the receiver personally. *State v. Red River Valley Elevator Co.*, 72 N. W. Rep. 60.

Personal property of a corporation is assessable at the places at which it was assessable before a receiver was appointed, without reference to the residence of the latter. *Id.*]

§ 1384. Personal property shall, for the purposes of taxation, be construed to include \* \* \* all public stocks and securities, all stock in turnpikes, railroads, canals and other corporations (except national banks), out of the State, owned by inhabitants of this State; all personal estate of moneyed corporations, whether the owners thereof reside in or out of this State; \* \* \* all shares of stock in any bank organized or that may be organized under any law of the United States, or of this State; \* \* \* and all such improvements upon lands the title to which is still vested in any railroad company, or any other corporation whose property is not subject to the same mode and rule of taxation as other property.

§ 1385. \* \* \* The term "person," whenever used in this act, shall be construed to include firm, company or corporation.

The term "corporations." Const., art. X, § 1.

## CHAPTER XXXIV.

## Corporations.

- Tit. 1. Corporations empowered to take private property; railroads, etc.  
 Tit. 2. Corporations for pecuniary profit other than those empowered to take private property for public uses.  
 8. General provisions.

## TITLE I. CORPORATIONS EMPOWERED TO TAKE PRIVATE PROPERTY FOR PUBLIC USES.

## Organization.

- Sec. 2450. Manner of.  
 2451. Articles of Incorporation to contain what.

## Stockholders.

- Sec. 2454. Transfer of shares.  
 2455. Individual liability.  
 2456. Same; levy on private property.  
 2457. Same.

## Powers and Duties.

- Sec. 2458. General powers.  
 2459. Increased capital stock; change of articles.  
 2464. Statement of financial condition.

## Diversion of Corporate Property.

- Sec. 2465. Penalty for.

## Organization.

§ 2450. They shall organize by adopting and signing articles of incorporation, which shall be recorded in the office of the register of deeds of the county where the principal place of business is to be, and also in the office of the secretary of State, in books kept for such purposes.

See § 2639.

[A de facto corporation exists where there is a law authorizing the creation of corporations, an attempt to organize pursuant to it, and user thereunder. A substantial compliance with the law is not necessary to constitute the body a de facto corporation. *Finnegan v. Noerenberg*, 52 Minn. 239; s. c., 53 N. W. Rep. 1150.]

Promoters of the proposed corporation, who abandoned purpose of its organization, held individually liable for contracts made by it pending the proposed organization. *Mfg. Co. v. Schlick*, 64 N. W. Rep. 826; *Same v. Wright*, *Id.* 827.

Persons entering into articles of association with intention of incorporating, but failing to perfect such incorporation, are to be held individually liable upon contract. *Johnson v. Corser*, 34 Minn. 355; s. c., 25 N. W. Rep. 799.]

- § 2451. Said articles shall contain:  
 First. The name of the corporation, the

general nature of the business, and the principal place, if any, of the transacting the same.

Second. The time of commencement and the period of continuance of said corporation.

Third. The amount of capital stock of said corporation, and how to be paid in.

Fourth. The highest amount of indebtedness or liability to which said corporation shall at any time be subject.

Fifth. The names and places of residence of the persons forming such association for incorporation.

Sixth. The names of the first board of directors, and in what officers or persons the government of the corporation and the management of its affairs shall be vested, and when the same are elected.

Seventh. The number and amount of the shares in the capital stock of said corporation.

And shall be published for four successive weeks in some newspaper printed and published at the capital of the State, or in the county where such corporation is organized: Provided, That in cases where articles of incorporation have been adopted and signed, or may hereafter be adopted and signed, as provided in sections two and three of this chapter, and filed for record in the office of the secretary of State, the publication of the same for one week in some newspaper printed and published at the capital of the State, or in some newspaper printed and published in the county where such corporation is organized, shall be a sufficient publication under this chapter; and upon filing an affidavit of proof of such publication in the office of the secretary of State, the persons named in such articles shall thereupon become a corporation, with the authority and powers in this chapter provided and intended.

### Stockholders.

§ 2454. The transfer of shares is not valid, except as between the parties thereto, until it is regularly entered on the books of the company, so far as to show the names of the persons by and to whom transferred, the numbers or other designation of the shares, and the date of the transfer; but such transfer shall not in any way exempt the person making such transfer from any liabilities of said corporation which were created prior to such transfer. The books of the company shall be so kept as to show intelligibly the original stockholders, their respective interests, the amount which has been paid in on their shares, and all transfers thereof; and such books, or a correct copy thereof, so far as the items mentioned in this section are concerned, shall be subject to the inspection of any person desiring the same.

Stock transferable only in such form as directors prescribe. § 2643. Directors shall keep a record. § 2644. Books must be open to inspection. § 2669. Transfer agents must exhibit transfer-books and list of stockholders. Act 18, at p. 48.

[If one offering stock for sale, falsely and fraudulently representing that the corporation is not in debt, is making profits, and thereby induces another to purchase, he is liable for the damages, although the truth might have been ascertained by investigation of affairs of the corporation. *Redding v. Wright*, 49 Minn. 322; s. c., 51 N. W. Rep. 1056.

One holding shares of stock as collateral security does not become a subscriber, nor is the pledgor divested of his rights as such. *McMullon v. Dickinson*, 65 N. W. Rep. 661.

A transferee of stock held liable on a subscription, though the transfer on the corporate books was not complete. *Oswald v. Minn. Times Co.*, 68 N. W. Rep. 15.

To constitute one a stockholder, it is not necessary that a certificate of stock be issued. *Holland v. Duluth Iron M. & D. Co.*, 68 N. W. Rep. 50.

The fact that a person's name appears on the stock-book as a stockholder held to create a presumption that he was a stockholder, and hence the book is admissible to show that fact. *Id.*

An owner of stock can transfer it, though the transfer is not entered on the books of the corporation. *Inv. Co. v. St. Paul, etc., Co.*, 70 N. W. Rep. 1079.

Right of equitable owner of stock to have transfer of the same entered on the books of the corporation determined. *Id.*

A pledgee of stock, to cancel stock and resell it to third person, held to have converted the same. *Upham v. Barber*, 68 N. W. Rep. 42.]

§ 2455. The private property of each stockholder in any corporation formed as herein provided is liable for corporate debts in the following cases:

First. For all unpaid instalments on stock owned by him, or transferred for the purpose of defrauding creditors.

Second. For a failure by the corporation to comply substantially with the provisions aforesaid as to organization and publicity.

Third. When he personally violates any of the provisions of this title in the transaction of any business of the corporation as officer, director or member thereof, or is guilty of any fraud, unfaithfulness or dishonesty in the discharge of any official duty.

Stockholder in corporation liable for. Const., art. X, § 3, and note. Penalty for fraud. § 6446. Liability of stockholders. § 2658. Liability of directors. § 2663. Executors not personally liable. § 3133. Directors may call in installments. § 2653. Neglect to pay installments. § 3131. Enforcement of liability by assignees and receivers. Act 20, at p. 48.

[A judgment against the corporation and others jointly, for the recovery of money is a corporate debt which may be enforced against stockholders individually liable. *Frost v. Investment Co.*, 57 Minn. 325; s. c., 59 N. W. Rep. 308.

The stockholder's statutory liability for corporate debts extends to those contracted before he acquired his stock, and may be enforced by action, although the corporation has assigned for the benefit of its creditors, and although insolvency proceedings are still pending. *Olson v. Cook*, 57 Minn. 552; s. c., 59 N. W. Rep. 635.



## Liability of stockholders — G. S., § 2455.

Purchasers of stock assume liability for previous sales and future debts of the corporation. *Bank v. Plow Co.*, 58 Minn. 167; s. c., 59 N. W. Rep. 997.

Construction of general statute 1878, ch. 34, § 9 (G. S., 1894, § 2455), making stockholders liable for corporate debts in case of a failure by the corporation to comply substantially with certain provisions as to organization and publicity. *Bank v. Harper*, 63 N. W. Rep. 1079; *Bank v. Loan Co.*, id.

Capital stock contributed or agreed to be contributed is, in equity, a trust fund charged with the payment of corporate debts, and no by-law or resolution of the stockholders can affect the rights of creditors. *Farnsworth v. Robbins*, 36 Minn. 369; s. c., 31 N. W. Rep. 349.

And in an action in behalf of creditors to recover upon a subscription to the capital stock, the fact that all the authorized capital stock may not have been taken is not available in defense. *Id.*

The right of creditors to compel the holders of "bonus" stock in an insolvent corporation to pay for it, contrary to their agreement with the corporation, rests not on the ground of implied contract, nor on the "trust fund" doctrine, but on the ground of fraud. Therefore, payment of such stock can never be enforced in favor of one who became a creditor before it was issued. *Hospes v. Mfg. & Car Co.*, 50 N. W. Rep. 1117.

Where a creditor asks to enforce payment of "bonus" stock from the holder, he must show equities entitling him to such relief. *Id.*

Where stock is issued as fully paid up, without, in fact, being so, equity will hold the shareholders liable for the amount not actually paid, except as to creditors who have dealt with the corporation with full knowledge of the fictitious arrangement. *Bank v. Mining Co.*, 42 Minn. 327; s. c., 44 N. W. Rep. 198.

Where a corporation issues new shares after the claim of a creditor arose, he cannot insist on contribution from the holders thereof. *Id.*

A complaint in an action to enforce stockholders' liability held insufficient as to any single stockholder for failure to show that any one defendant was a stockholder when the debt was contracted or at any subsequent time. *Trust Co. v. Loan & Trust Co.*, 65 N. W. Rep. 632.

When the corporation contracts a debt, the stockholder cannot be held a cocontractor therewith, so as to merge the right to proceed against the stockholder, to enforce his individual liability, in a judgment recovered against the corporation alone on such contract. *Dodge v. Roofing Co.*, 16 Minn. 368.

Under sections 2455-2457, a creditor may join in his action one or more, without joining all, of the stockholders subject to such liability, as such action is not intended to reach all the assets of the corporation, and all liabilities for its debts. *Bank v. Mfg. Co.*, 34 Minn. 323; s. c., 25 N. W. Rep. 639.

While affairs of an insolvent corporation are in the hands of a receiver, a creditor cannot maintain an action in his own behalf against a stockholder to recover for stock held by the latter, but never paid for. *Bank v. Mfg. & Car Co.*, 51 N. W. Rep. 119; *Mfg. Co. v. Langdon*, 44 Minn. 37; s. c., 45 N. W. Rep. 310.

Extent of individual liability of shareholders in a foreign corporation must be determined by the laws of the State of its creation. *Bank v. Mining Co.*, 42 Minn. 327; s. c., 44 N. W. Rep. 198.

A creditor of an insolvent foreign corporation may enforce his claim against the unpaid balances of subscriptions. *Rule v. Stove & Grate Co.*, 67 N. W. Rep. 60.

To constitute one a stockholder, it is not necessary that a certificate of stock be issued. *Holland v. Duluth Iron M. & D. Co.*, 68 N. W. Rep. 50.

The stockholders of a corporation are concluded in an action to enforce their liability, by a previous default judgment obtained against the corporation. *Id.*

Transferee of stock held liable on a subscription, though the transfer on the corporate books was not complete. *Oswald v. Minn. Times Co.*, 68 N. W. Rep. 15.

An agreement with subscribers that for each share paid for a certificate of two or more shares

shall be given, is void. *Rogers v. Gross*, 69 N. W. Rep. 894.

A stockholder held to have lost his right to rescind as against creditors of a corporation. *Olson v. State Bank*, 69 N. W. Rep. 904.

Findings of the court in an action to enforce liability of stockholders of insolvent corporation, held sufficient. *Bank v. Mfg. Co.*, 69 N. W. Rep. 217.

Evidence held sufficient to sustain a finding that defendant was a stockholder of an insolvent corporation. *Holland v. Duluth Iron M. & D. Co.*, 68 N. W. Rep. 50.

The fact that a person's name appears on the stock-book as a stockholder, held to create a presumption that he was a stockholder, and the book is hence admissible to show that fact. *Id.*

The liability of stockholders for corporate debts extends to debts due to stockholders as creditors. *Oswald v. Minneapolis Times Co.*, 68 N. W. Rep. 15.

In an action by a judgment creditor to enforce the stockholders' liability, the judgment against the corporation is conclusive on the stockholders. *Id.*

Finding held insufficient to show that the claim of creditors of an insolvent corporation were contracted in excess of the limit of corporate indebtedness. *Id.*

Evidence held inadmissible to show a verbal agreement between the stockholders that they should not be individually liable for corporate debts. *Id.*

Where a corporation, as assigned for the benefit of creditors, held a simple contract creditor may enforce the stockholder's liability (G. S. 1894, ch. 76) for such of the debts as may remain unpaid after the assets shall have been administered by the assignee. *Minneapolis Paper Co. v. Swinburne Co.*, 69 N. W. Rep. 144.

Creditors are entitled to recover receiver's fees in addition to their debts and statutory costs and disbursements, not exceeding the amount of the stockholders' statutory liability. *Harper v. Carroll*, 69 N. W. Rep. 610, 1069.

In a judgment against stockholders of an insolvent corporation it is proper to provide that on collection in full, a judgment of contribution may be entered between the stockholders. *Id.*

In an action under G. S. 1894, ch. 76, to enforce the double liability of stockholders of an insolvent corporation, creditors are entitled to judgment against such stockholder for the full amount of his statutory liability. *Id.*

Rights of stockholders in an action to enforce the statutory liability where there are non-resident stockholders over whom the court has no jurisdiction, determined. *Id.*

Rule established as to the issue of executions against stockholders of an insolvent corporation, where the aggregate amount of the judgment on their stock liability exceeds the aggregate amount to be satisfied by the same. *Id.*

The court may, on application, stay the docketing of a judgment against a stockholder of insolvent corporation on giving bond to pay the assessments on the judgment. *Id.*

Where a stockholder of an insolvent corporation is also a creditor, it is proper to render judgment against him for his statutory liability and to declare it a lien on the amount due him. *Id.*

One becoming a stockholder in a de facto corporation held estopped to question its existence. *Id.*

Liability of stockholders on insolvency of a corporation determined. *Rogers v. Gross*, 69 N. W. Rep. 894.

Stockholders who have accepted unpaid certificates held to have no equitable rights as against the subscribers who have paid for their stock. *Id.*

A corporation held chargeable with notice of claim of defendant corporation to the corporate stock in controversy before the creation of the debt for which it claimed a lien. *Investment Co. v. St. Paul, etc., Co.*, 70 N. W. Rep. 1079.

As to liability of stockholders, necessary averments by creditors, etc., see *Gunnison v. U. S. Inv. Co.*, 73 N. W. Rep. 149; *In re Receivership of Northern Trust Co.*, id. 173; *Lincoln v. Carroll*, id.]

§ 2456. The private property of no stockholder shall be levied on under the preceding section, unless such stockholder, as well as the corporation, is duly served with process in the action, and the issue involving his individual liability as aforesaid raised and determined; and in no case whatever shall such property be levied on while sufficient corporate property can be found to satisfy the execution or any part thereof.

See § 2455, and cross-references.

[A sheriff levying upon an unpaid stock subscription, as a debt of the corporation, does not acquire the rights of a creditor of the company against a stockholder, but only those which the company might have against him, and in suing for the debt he must proceed as for a debt due from the stockholder to the company. *Robertson v. Sibley*, 10 Minn. 323.

The above provisions, and those of Const., art. X, § 3, will not operate to prevent a creditor, who has recovered judgment against the corporation alone, establishing its liability on a contract, from maintaining an action against a stockholder to enforce his individual liability, in case execution is returned unsatisfied against the corporation. *Dodge v. Roofing Co.*, 16 Minn. 368.

Where a creditor has obtained judgment against a corporation, and execution thereon has been issued and returned unsatisfied, the creditor may bring an action against a stockholder to enforce his individual liability for the corporate debt, without joining the corporation as a party; and, in case of the death of the stockholder, he may present and prove his claim against the estate in the probate court. *Nolan v. Hazen*, 44 Minn. 478; s. c., 47 N. W. Rep. 155.]

§ 2457. The officer holding an execution which may be levied on private property, as aforesaid, shall make demand of payment thereon of the president, secretary, or some officer of the corporation, acting, or who was one of the last acting officers thereof; and if he does not forthwith pay said execution, or point corporate property that may be levied on, the officer shall endorse the fact of such demand, refusal or neglect upon said execution, and thereupon may levy the same upon the private property of the stockholder served and impleaded as aforesaid. Such levy may be made to satisfy any balance due upon the execution after levy upon corporate property, or part-payment out of corporate funds.

#### Powers and duties.

§ 2458. When articles are filed, recorded and published as aforesaid, the persons named as corporators therein become a body corporate, and are authorized to proceed to carry into effect the objects set forth in said articles in accordance with the provisions of this title, and shall have perpetual succession, sue and be sued by its corporate name, have a common seal, which it may alter at pleasure, may render the interest of its stockholders transferable, establish by-laws, and make all rules and regulations deemed expedient for the management of its affairs, in accordance with law, and not

incompatible with an honest purpose, and whenever, after the adoption, filing, publication and recording of the articles of incorporation, as provided for in section three (§ 2451) of said chapter, and the creation thereby of a body corporate, the said corporation so created shall resolve to alter, modify or change any of its articles of incorporation, such corporation may, by resolution duly passed at any regular meeting of the directors thereof, adopt a new article or articles, altering, modifying or changing any of the original articles of incorporation; Provided, Such alteration, modification or change shall only relate to and affect the name of such incorporation, the general nature of its business, and the principal place of transacting the same, the amount of its capital stock, and how to be paid in, the highest amount of indebtedness or liability to which said corporation shall at any time be subject, and the number and amount of the shares of its capital stock. And also the number of directors, their term of office and the manner of their election.

And provided further, That no such new and amended articles of incorporation shall be operative or valid to alter, modify or change such original articles of incorporation until the same shall be filed, published and recorded in the same manner and with like formalities that the original articles of incorporation are now required to be filed, published and recorded; and when so adopted, the said amended articles of incorporation shall be substituted for and take the place of the original articles of incorporation so amended.

See Const., art. X, § 4; id., art. I, § 13; Stat., §§ 2667, 3127.

§ 2459. Whenever any railroad corporation heretofore or hereafter incorporated, whether under the provisions of this title or by special charter shall, in the opinion of its board of directors, require an increased amount of capital stock, or whenever any incorporation created and incorporated under the provisions of this title, or adopting its provisions as hereinbefore provided, shall in the opinion of its board of directors, require any other modification of its articles of association not inconsistent with the provisions of this title, such corporation may, if authorized by the holders of a majority of the stock then existing, increase its capital stock to the amount so deemed to be required, or make such other modification of its articles of association; Provided, That if the corporation be one incorporated under the foregoing provisions of this title or adopting its provisions as aforesaid, it shall file in the office of the secretary of State new articles setting forth the modifications of its said articles of association



Increase of capital; statement of condition; diversion, etc.—G. S., §§ 2464, 2465.

proposed, and the amount of such desired increase of stock, if any, and such new articles shall be duly recorded, and a reference made to the same on the margin of the record of the original certificate or articles, and thereafter such corporation shall be entitled to have such increased capital as is fixed by said new articles or such other modifications of the original articles of association as shall be therein specified; And provided further, That if such corporation be one incorporated under, or entitled to the benefit of special charter provisions, a certificate of such increase, embracing a copy of the resolutions of the board of directors and of the stockholders relating to such increase, and showing the date thereof and the total capital stock of the company as thus increased, under the seal of the corporation and attested by the president and secretary thereof, shall be filed in the office of the secretary of State and there recorded within . . . days after the date of the assent of the stockholders to such increase, and thereafter such corporation shall be entitled to have such increased capital stock as is provided for in and by said resolution.

Amendment of articles. § 2647; see §§ 2656, 3150.

§ 2464. A statement of the amount of the capital stock subscribed, the amount of capital actually paid in, and the amount of indebtedness of the company, in a general way, shall also be kept posted up in like manner, which statement shall be corrected as often as any material change takes place in relation to any part of the subject-matter of such statement.

See §§ 2644, 2669.

#### Diversion of Corporate Property.

§ 2465. The diversion of the corporate property to other objects than those specified in the articles and notices published as aforesaid, (if any person is injured thereby,) the declaring of dividends when the profits are insufficient to pay the same, the payment of dividends when the funds remaining will not meet the liabilities of the corporation, any willful failure to comply with the articles of incorporation, or any intentional deception of the public or individuals in relation to their means or liabilities, are criminal offenses, and persons guilty of any of them may be indicted, and, on conviction, shall be punished by a fine not more than five thousand dollars, or by imprisonment in the State prison not more than three years, or both such fine and imprisonment, in the discretion of the court.

See § 6448.

#### TITLE II. CORPORATIONS FOR PECUNIARY PROFIT OTHER THAN THOSE EMPOWERED TO TAKE PRIVATE PROPERTY FOR PUBLIC USES.

- Sec. 2638. For what purposes authorized; name; dealings in lands and tenements; premiums; purchase at judicial sale; loan to own members only; fiduciaries.  
 2639. Certain preceding sections applicable.  
 2640. Duration of such corporation.  
 2641. Publication of articles legalized.  
 2642. Capital stock; amount.  
 2643. Same; transferable; lien.  
 2644. Record of stock and business; reports; dividends.  
 2645. Power to acquire and transfer necessary property.  
 2646. Offices within and without this State.  
 2647. Amendment of articles.  
 2648. Publication, filing, and record.

#### *Foreign Corporations for Dealing in Land.*

- Sec. 2649. Powers and duties; limitations; appoint resident attorney.

#### *Corporations for Manufacturing or Mechanical Business.*

- Sec. 2650. Authorized.  
 2651. Articles of association; amendment; proof of publication; may alter or modify articles.  
 2652. Publication; certificate; commencement of business.  
 2653. Duration; renewal.

#### *Capital Stock.*

- Sec. 2654. Amount; shares.  
 2655. Subscription to.  
 2656. Increase of.  
 2657. Transfer; lien on.  
 2658. Liability of stockholders.

#### *Board of Directors.*

- Sec. 2659. Election; term of office.  
 2660. Failure to elect.  
 2661. Vacancies.  
 2662. Directors shall choose officers.  
 2663. Liabilities.  
 2664. Same.

#### *Meetings.*

- Sec. 2665. How called; notice; waiver.  
 2666. Quorum.

#### *Powers and Duties.*

- Sec. 2667. General powers.  
 2668. Power to hold property.  
 2669. Books open to inspection; annual statement.  
 2670. Oath to certificates.  
 2671. Neglect of duty.

#### *Mining and Manufacturing.*

- Sec. 2672. Authorized.  
 2673. Amendment.  
 2674. Articles of incorporation, contents of.  
 2675. Same; record; effect; amendment of.

#### *Capital Stock.*

- Sec. 2676. Amount of.  
 2677. Transfer; majority of stockholders may call meeting.



*Powers and Duties.*

- Sec. 2678. Board of directors; by-laws.  
 2679. May mortgage, sell or lease its realty.  
 2680. May hold stock in other corporations.  
 2681. Offices within and without this State.  
 2682. Fraudulent acts of officers.

**Corporations for Pecuniary Profit other than that those Named in Title I.**

§ 2638. Any number of persons, not less than three, who have or shall, by articles of agreement in writing, associate according to the provisions of this title, under any name assumed by them, for the purpose of engaging in or carrying on the business of mining, smelting or manufacturing iron, copper or other minerals; or for producing the precious metals; or for quarrying and marketing any kind of ore, stone, slate, or other mineral substance; or for constructing, leasing or operating docks, warehouses, public halls, elevators or hotels; or saving-fund, loan or building association, (or association for buying, owning, improving, selling and dealing in lands, tenements and hereditaments;) or for manufacturing gas, or any kind of manufacturing, lumbering, agricultural, mechanical, mercantile, chemical, transportation, or other lawful business, and who have or shall comply with the provisions of this title, shall, with their associates, successors and assigns, constitute a body corporate and politic, under the name assumed by them in the articles of agreement.

Provided, No company shall take a name previously assumed by any other company.

Any such association or corporation for buying, owning, improving, selling and dealing in lands, tenements and hereditaments, real, mixed and personal estate and property, shall have, and may exercise and enjoy, all the franchises, rights, powers and privileges of a corporation, as provided in this title and act, and the same is made capable and authorized in law and in equity to have, own, purchase, receive, possess and retain to itself and successors, lands, tenements and hereditaments, real, personal and mixed estate and property, and to use and enjoy the same, and the same improve by erecting and constructing thereon dwelling-houses, and other buildings, erections and structures, and otherwise to enhance, build upon and improve the same, to every extent, and in such manner, and for such purpose as may become necessary, or as such association or corporation may deem proper or advantageous; and to sell, convey, lease, let, mortgage, or otherwise dispose of, charge or encumber such lands, tenements and hereditaments, real, mixed and personal property, and estate, or any of the same, or any right or interest therein, at pleasure, and in such manner and on such terms as such corporation or association may deter-

mine by order of its directors, or establish by its by-laws; and for that purpose to make and deliver, and in like manner accept and receive, all necessary and proper deeds, conveyances, mortgages, leases, and other contracts and writings obligatory, and to have and exercise all necessary rights, franchises, muniments, estate, powers and privileges necessary to that end; and such association or corporation is authorized to loan money and funds, and secure such loan by mortgage, or other security.

And any premium taken by such association for the preference or priority of such loans, or for the preference or priority on any sale or disposition of its lands, tenements or hereditaments, real, personal or mixed property or estate, or any premium for preference or priority taken by any mutual building association for any loan of its funds by such building association, shall not be deemed interest within the meaning of any law of this State, nor shall any excess of such premiums over any rate of interest permitted by the laws of this State be deemed or held, in any court of law or equity, to be usury.

Any association organized under this title is authorized and empowered to purchase at any sheriff's or other judicial sale, or at any other sale, public or private, and to hold, any real estate upon which such associates or association may have or hold any mortgage or judgment, or lien, or other incumbrance, or in which such associates or association may have an interest; and the real estate so purchased, to sell, convey, lease or mortgage, at pleasure, to any person or persons, or purchasers whatever.

Provided, however, That no mutual building association, nor association for buying, selling and dealing in lands, tenements and hereditaments, shall loan its funds except to its own members.

The executors or trustees under any will or one (1) or more of such executors or trustees, who are authorized, requested or directed by the provisions of any will to organize a corporation for any of the purposes mentioned in this section or the general laws of this State, may, individually or as executors or together with the legatees mentioned in the will or one or more of such executors, trustees or legatees, may sign, execute and acknowledge articles of incorporation under the provisions of this act of which this is amendatory for the purpose of carrying out the intention of the testator and for forming and organizing such corporation, and in such case may transfer and convey to such corporation any property of the testator mentioned and referred to in such will, and said executors, trustees or legatees, or such of them as shall execute the articles of incorporation, may subscribe to the stock of such corporation to the amount of the value of the property mentioned and referred to in such will, and

## Capital stock; transfers; lien on stock; records — G. S., §§ 2639-2644.

such executors or trustees may convey the same to such corporation in payment of the stock so issued and subscribed without application to or authority from any court.

Const., art. IV, § 33; *Id.* art. X, § 2.

[Above section authorizes, under the expression "or other lawful business," the formation of corporations for carrying on any kind of lawful business, for pecuniary profit, not elsewhere specifically provided for, although not of the same kind as any of those previously enumerated in the section. *Brown v. Corbin*, 40 Minn. 508; *s. c.*, 42 N. W. Rep. 481.

Acceptance of a legislative charter may be presumed from acts of the corporations. *Sons of Temperance v. Brown*, 11 Minn. 356; *State v. Sibley*, 25 *Id.* 387.

Acts of a corporation, to amount to an adoption or acceptance of legislation affecting its charter, must clearly appear to have been done in pursuance and recognition thereof. *Boom Co. v. Prince*, 34 Minn. 79; *s. c.*, 24 N. W. Rep. 344.]

§ 2639. The provisions of sections two, three, four, seven, eight, nine, ten, eleven, forty-two and forty-four, of title one,\* shall apply to and be observed by corporations organizing under this title.

§ 2640. No corporation shall be formed under this title to continue more than thirty years.

Legallizing proceedings for extending period of corporate existence. Act of 1893, at p. 43. Authorizing extension. Act of 1895, at p. 46.

§ 2641. That the publication of articles of incorporation heretofore made for six (6) successive days in a daily newspaper printed and published in the county where such corporation is organized, be and the same is hereby legalized and made as valid and as effectual to all intents and purposes in the organization of corporations for any of the purposes designated in section one hundred and nine (109) of chapter thirty-four (34) of the general statutes, eighteen hundred and seventy-eight (1878), or in any act amendatory thereto, as if such publication had been made for four successive weeks in a newspaper so printed and published.

See §§ 2648, 2651.

§ 2642. The amount of capital stock in any such corporation shall in no case be less than ten thousand (10,000) dollars, and shall be divided into shares of not less than two (2) dollars, nor more than one hundred (100) dollars each; except that the capital stock of mutual building and loan associations may be divided into shares of two hundred (200) dollars each, and the capital stock and number of shares may be in

creased at any regular or special meeting of the stockholders.

See §§ 2654, 2676. Increase of capital stock. § 2656. Issuance of capital stock. § 3130.

[To constitute one a stockholder, it is not necessary that a certificate of stock be issued. *Holland v. Duluth Iron, M. & D. Co.*, 68 N. W. Rep. 50.

When an increase of stock was purchased by the president, and paid for with city funds of which he was custodian, and the stock then sold to third parties, held, that the stock was not ultra vires, but only voidable. *Olson v. State Bank*, 69 N. W. Rep. 904.

An agreement with subscribers that for each share paid for a certificate of two or more shares shall be given, is void. *Rogers v. Gross*, 69 N. W. Rep. 894.

When bonds issued in excess of limit of indebtedness are not illegal. *Peatman v. Heat & Power Co.*, 69 N. W. Rep. 541.]

§ 2643. The stock of any such corporation shall be deemed personal property, and be transferable only on the books of such corporation, in such form as the directors prescribe; and such corporation shall at all times have a lien upon the stock or property of its members invested therein, for all the debts due from them to such corporation, which may be enforced by advertisement and sale in the manner provided for selling delinquent stock.

Transfer of shares not valid except between the parties thereto, when. § 2454. Transfer, lien on. §§ 2657, 2677; see Act 18, at p. 48.

[A sale of stock, without transfer on books, is effectual as between the parties and attaching creditors. *Lund v. Mill Co.*, 50 Minn. 36; *s. c.*, 52 N. W. Rep. 268.

A transfer of stock held sufficient to change the equitable ownership, so as to make the transferee liable for the payment of calls on the stock. *Basting v. Trust Co.*, 63 N. W. Rep. 721.

An assignment of shares, though without a transfer on the books, invests the assignee with an equitable title, which would be protected as against all persons not showing a superior right. *Nicollet Nat. Bank v. City Bank*, 38 Minn. 85; *s. c.*, 35 N. W. Rep. 577.

An assignment of stock transferable only on the books without such transfer, for the purpose of collateral security, is effectual as against the bank asserting a lien for a debt of the stockholders, and its refusal, because of such asserted lien, to make the proper transfer on its books, renders it liable to the assignee as for conversion of the stock. *Id.*

An attachment of the shares by the bank, after notice of the assignment, is ineffectual to defeat the prior right of the assignee. *Id.*]

§ 2644. The directors shall cause a record to be kept of all stock subscribed and transferred, and of all business transactions, and their books and records shall at all times be open to the inspection of any and all stockholders; they shall also, when required, present to the stockholders reports in writing of the situation and amount of business of the corporation, and declare and make such dividends of the profits from the business of the corporation, not reducing the capital stock while they have outstanding liabilities.

\*Sections referred to above are §§ 2450, 2451, 2454, 2455, 2456, 2457, 2458, 2459, 2464, 2465, ante.



Powers as to property; amendment of articles; manufacturing co's — G. S., §§ 2645-2651.

Transfers not valid except to the parties thereto until regularly entered. § 2454. Books must be open to inspection. § 2669. Fraud in keeping books. § 648; see § 2464. Directors must not declare a dividend when corporation is insolvent. § 2664; see Act 18, at p. 48.

§ 2645. Every such corporation has power to acquire, hold and transfer all such real and personal estate as is necessary or convenient for the purpose of conducting, carrying on, or disposing of the business of such corporation.

See §§ 2668, 2679, 3128. Deeds, mortgages and other conveyances. §§ 4110, 4111. Transfers of property validated. Acts 17 and 19, at pp. 47, 48.

[The Minnesota laws are applicable to private corporations for profit. *Tripp v. Bank*, 41 Minn. 400; s. c., 43 N. W. Rep. 60; *Bank v. Seeley*, 41 Minn. 404; s. c., 43 N. W. Rep. 1152. And the board of directors may authorize an assignment by the corporation when the conditions specified in the act exist. *Id.*]

§ 2646. The directors of any corporation organized under this title have power to establish one or more offices without this State, and transact business thereat: Provided, That an office shall always be maintained in this State where legal process may be served on the person in charge thereof.

See § 2681; Act of 1895, at p. 46.

§ 2647. The shareholders or stockholders in any body politic or corporate which has been or hereafter may be incorporated pursuant to the provisions of title two of chapter thirty-four of the general statutes of this State, may amend the articles of association of such body corporate in any respect which might have been lawfully made a part of such original articles, by adopting, by a majority vote in number and amount of such shareholders and shares, articles specifying such amendments.

See §§ 2459, 2651, 2675.

§ 2648. Any body politic or corporate amending its original articles of association, shall cause to be prepared a certificate stating the time when and the respect in which such articles were amended, which certificate shall be subscribed and sworn to by the president or other chief executive officer, and also by the secretary of such body politic or corporate, and shall also be filed, published and recorded in the same manner provided by law for the filing, recording and publication of such original articles; and thereupon such amendments shall be and become a part of the articles of such body corporate, with the same force and effect as if such amendments had been adopted as a part of such original articles.

See §§ 2651, 2641.

### Foreign Corporations for Dealing in Land.

§ 2649. Any foreign corporation which now is or hereafter may be created in whole or in part for the buying or selling of, or dealing in lands, in this State, or in the promotion of immigration to, or the settlement or occupation of any lands in this State, may loan its funds to persons, whether its members or not, and take and enforce securities therefor, and may acquire, take, hold, convey, use or occupy real, personal or mixed property of every name and nature, within this State, and make contracts and transact all lawful business, consistent with the objects and purposes of said corporation, and said corporation shall in all respects be subject to the laws of this State, and in all suits or proceedings by or against said corporation, it shall be deemed for all purposes a domestic corporation.

Provided, That no such corporation shall acquire or hold at any one time more than one hundred thousand (100,000) acres of land in this State, and that all lands acquired by it shall be sold within twenty-one (21) years after their acquisition, except such lands as may be acquired by it under mortgage foreclosure, or forfeiture of contracts for the sale thereof, which shall be disposed of by it within fifteen (15) years after such acquisition or forfeiture.

And provided further, Said corporation shall appoint an agent or attorney residing within this State, upon whom all process may be served, which appointment shall be filed in the office of the secretary of State.

### Corporations for Manufacturing or Mechanical Business.

§ 2650. Any number of persons, not less than three, who, by articles of agreement in writing, have associated or shall associate according to the provisions of this act, under any name assumed by them, for the purpose of carrying on any kind of manufacturing or mechanical business not incompatible with an honest purpose, and who shall comply with all the provisions of this act, shall, with their successors and assigns, constitute a body politic and corporate, under the name assumed by them in their articles of association.

Liability of stockholders of manufacturing corporations. Const., art. 10, § 3, and note.

[No corporation can be organized under this chapter except for an exclusively manufacturing or mechanical business. *State v. Mfg. Co.*, 40 Minn. 213; s. c., 41 N. W. Rep. 1020.

A brewing company held to be exclusively a manufacturing corporation. *Malting Co. v. Brewing Co.*, 67 N. W. Rep. 652.]

§ 2651. The purpose for which every such corporation shall be established, shall be distinctly and definitely specified by the



Manufacturing, etc., companies; articles of association; capital — G. S., §§ 2652-2655.

stockholders in their articles of association, and it shall not be lawful for said corporation to direct its operations or appropriate its funds to any other purpose.

Provided, That such articles of association may be amended in any respect which might have been lawfully made a part of such original articles, at any meetings of such stockholders, by a majority vote of all the shares of stock represented in such corporation, upon giving notice of a meeting of such stockholders to be held for the purpose of making such change, in the same manner as provided in section four of this act for the first meeting of the corporation, except that notice of change shall not be waived as therein provided.

Proof of the publication of such notice and change, made by filing the affidavit of the publisher and a certified copy of the proceedings making such change, shall be filed in the office of the secretary of State, in the same manner as provided for the filing of the articles of incorporation of such association therein.

Provided, That whenever, after the adoption, filing and publication of the articles of association, and the making and recording of the certificate provided for by this act, and the creation thereby of a body corporate, the said corporation shall resolve to alter, modify or change any of its articles of association, such corporation may, by resolution duly passed at any regular meeting of the stockholders thereof, adopt a new article or articles, altering, modifying or changing any of the original articles.

Provided further, That no such new or amended articles shall change the general nature of its business, or be operative or valid to alter, modify or change such original articles until the same shall be published and the certificate of the purposes for which said corporation is formed as set forth in such new or amended articles, in the same manner and with like formalities that the original articles are now required to be published and the certificate thereof recorded, and, when so adopted, published, and the certificate aforesaid recorded, the said amended articles shall be substituted for and take the place of the original articles so amended.

Publication of amendments. §§ 2648, 2641; see § 2647, and cross-references.

§ 2652. Before any corporation formed and established by virtue of the provisions of this act shall commence business, the president and directors thereof shall cause their articles of association to be published at full length in two newspapers published in the county in which such corporation is located, or at the capital of the State; and shall also make a certificate of the purpose for which such corporation is formed, the

amount of its capital stock, the amount actually paid in, and the names of its stockholders, and the number of shares by each respectively owned, which certificate shall be signed by the president and a majority of the directors, and deposited with the secretary of this State, and a duplicate thereof with the register of deeds of the county in which said corporation is to transact its business; and said secretary and said register of deeds shall respectively record the same in books to be kept by them for that purpose; and within thirty days after the payment of any installment called for by the directors of such corporation, a certificate thereof shall be made, signed, deposited and recorded, as aforesaid. A copy of the certificate first specified in this section, certified by the secretary of this State, under the seal thereof, shall be received in all the courts in this State as prima facie evidence of the due formation, existence and capacity of such corporation, in any suit brought by or against the same.

See §§ 2641, 2648. Certificate to be made under oath. § 2670.

[Failure to file the verified certificate does not affect the lawful character of the corporation. In re Shakopee, etc., Co., 37 Minn. 91; s. c., 33 N. W. Rep. 219.]

§ 2653. No corporation formed under the provisions of this act shall continue more than thirty years in the first instance, but it may be renewed from time to time for a period not longer than thirty years: Provided, That three-fourths of the votes cast at any regular meeting of the stockholders for the purpose are in favor of such renewal, and those desiring a renewal purchase the stock of those opposed thereto at its current value.

See Act of 1893, and cross-references, at p. 46.

### Capital Stock.

§ 2654. The amount of capital stock of every such corporation shall be fixed and limited by the stockholders in their articles of association, and shall be divided into shares of not less than fifty (50) and not more than one hundred (\$100) dollars each, but every such corporation may increase its capital stock and the number of shares therein at any meeting of the stockholders specially named for that purpose.

See §§ 2642, 2676, 3149. Increase of capital stock not effectual until. § 3150.

§ 2655. The directors may call in the subscription to the capital stock of such corporation by installments, in such proportion and at such times and places as they shall think proper, by giving such notice thereof

Payment of installments; withdrawal of capital; directors — G. S., §§ 2656-2659.

as the by-laws shall prescribe; and in case any stockholder shall neglect or refuse payment of any such installment, for the space of sixty days after the same shall have become due and payable, and after he shall have been notified thereof, said corporation may recover the amount of said installment from such negligent stockholder in any proper action for that purpose, or may sell said stock at public auction, giving at least thirty days' notice thereof, and of the time and place of sale, by advertising in some newspaper published in the county where the business of such corporation is transacted, or at the capital of the State. And in case of a sale, the proceeds thereof shall be first applied in payment of the installments called for, and the expenses of the sale, and the residue shall be refunded to the owner thereof. In case the proceeds of such sale shall be insufficient to pay said installments, such corporation may recover the balance from such negligent stockholder. Such sale shall entitle the purchaser to all the rights of a stockholder, to the extent of the shares so purchased.

See §§ 3131, 2455.

[In an action to recover calls upon subscriptions for stock, an allegation that such calls were duly made by the directors and notice thereof duly given the subscribers is sufficient. *Harvester Co. v. Robbins*, 56 Minn. 48; s. c., 57 N. W. Rep. 317.

The transferee of stock is liable for unpaid subscriptions on it. In re Ins. Co., 56 Minn. 180; s. c., 57 N. W. Rep. 468.

An action to recover the unpaid balance of a subscription to stock cannot be maintained without first tendering the stock. *Harvester Co. v. Jefferson*, 57 Minn. 456; s. c., 59 N. W. Rep. 532.

Complaint in an action to enforce stock subscriptions examined and held sufficient. *Duluth Co. v. Witt*, 65 N. W. Rep. 956.

Subscribers who had paid for their stock in order to induce subscribers who had repudiated their subscriptions to take the stock subscribed for, agreed with one of them that if he took the stock subscribed for by him, they would give him a note for the amount thereof. Held, that the agreement was not fraud on the other repudiating subscribers. *Traphagen v. Sager*, 65 N. W. Rep. 633.

In an action to recover from a stockholder of an insolvent corporation his subscription, it is no defense that the purpose of the corporation was to foster gambling. *Augir v. Ryan*, 65 N. W. Rep. 640.

Calls may be made by the court upon the unpaid subscriptions of an insolvent corporation, where it has made an assignment under the insolvent laws. In re Driving Park Assn., 53 Minn. 423; s. c., 55 N. W. Rep. 598; *Marson v. Deither*, 49 Minn. 423; s. c., 52 N. W. Rep. 38. Unnecessary to tender a certificate of the stock to maintain an action for such calls. Id.

A corporation may issue paid-up shares for property purchased at a fair valuation. *Malting Co. v. Brewing Co.*, 67 N. W. Rep. 652.

A subscriber to corporate stock held released by delay on the part of the corporation to comply with the conditions of the subscription. *Carter R. & H. Co. v. Hazzard*, 68 N. W. Rep. 74.]

§ 2656. When any such corporation shall increase its capital stock as provided in the second section of this act (§ 2654), the president and directors shall, within thirty days thereafter, make a certificate thereof, which

shall be signed, deposited and recorded, as provided in the ninth section (§ 2652).

See § 2459.

§ 2657. The stock of every such corporation shall be deemed personal property, and be transferred only on the books of such corporation, in such form as the directors shall prescribe; and such corporation shall at all times have a lien upon all the stock or property of its members invested therein, for all the debts due from them to such corporation.

See §§ 2454, 2644, 2643, and cross-references; Act 18, at p. 48.

§ 2658. If the capital stock of any such corporation shall be (withdrawn) and refunded to the stockholders, before the payment of all the debts of the corporation for which such stock would have been liable, stockholders of such corporation shall be liable to any creditor of such corporation, in an action founded on this statute, to the amount of the sum refunded to them respectively as aforesaid; but if any stockholder shall be compelled, by any such action, to pay the debts of any creditor, or any part thereof, he shall have the right to call upon all the stockholders to whom any part of said stock has been refunded, to contribute their proportional part of the sum paid by him as aforesaid.

See § 2455, cross-references, and note.

### Board of Directors.

§ 2659. The stock, property, affairs and business of every such corporation shall be under the care and shall be managed by not less than three directors, who shall be chosen annually by the stockholders at such time and place as shall be provided by the by-laws of said corporation, and who shall be stockholders, and shall hold their offices for one year, and until others shall be chosen in their stead.

See §§ 3127, 2667, subd. 3. Powers and duties of directors. § 2678.

[An amendment by the legislature of the charter of a corporation, increasing the number of directors from five to nine, is not a fundamental alteration, and may, therefore, be effectually accepted by a majority of the stockholders. *Mower v. Staples*, 32 Minn. 284; s. c., 20 N. W. Rep. 225. The power of a corporation to ratify an act of its agent, in the absence of evidence to the contrary, is presumed to be in the board of directors. *Land Assn. v. Ready*, 24 Minn. 350.

Directors have no authority to appropriate funds to the payment of claims which the corporation is under no obligation to pay. *Jones v. Morrison*, 31 Minn. 140; s. c., 16 N. W. Rep. 854. A vote of board of directors, fixing the compensation of some of the directors as officers of the corporation, and which is carried by the vote of such directors, is prima facie voidable at the election of the corporation or of a stockholder. Id.



## Directors, organization of board; dividends; meetings — G. S., §§ 2660-2665.

The fact of being a director does not preclude one from performing other services for a corporation, outside his duties as director, and receiving compensation therefor. *Rogers v. Ry. Co.*, 22 Minn. 25.

Directors are personally liable if they suffer corporate funds or property to be wasted or lost by gross negligence and inattention to their duties; and an action at law may be maintained against them jointly and severally for the amount of such losses. *Mining Co. v. Ryan*, 42 Minn. 196; s. c., 44 N. W. Rep. 56.

In an action against directors for misfeasance or culpable negligence in discharging their duties, the corporation, and not the stockholders, is the proper party plaintiff. *Id.* In such an action, what is a sufficient cause of action. *Id.* Not necessary that complaint should negative knowledge of, or acquiescence on the part of the stockholders in, the negligence or misconduct of the directors. *Id.* There is no misjoinder of causes of action in a complaint which sets forth a series of acts or omissions on part of directors, alleged to have constituted actionable negligence on their part. *Id.*

A contract between the corporation and a director is not necessarily voidable. *Battele v. North Western, etc., Pavement Co.*, 37 Minn. 89; s. c., 33 N. W. Rep. 327.

Evidence held to show that the board of directors of a corporation made a certain determination by a two-thirds vote. *Fletcher v. Chicago, etc., Ry. Co.*, 69 N. W. Rep. 1085.

Minority of stockholders cannot dictate policy of the corporation. *Peatman v. Heat & Power Co.*, 69 N. W. Rep. 541.]

§ 2660. If any election of directors in any such corporation shall not take place at the annual meeting thereof, in any year, such corporation shall not thereby be dissolved, but an election may be had at any time within one year, to be fixed upon and notice thereof to be given by the directors.

§ 2661. The directors of such corporation for the time being shall have power to fill any vacancy which may happen in their board, by death, resignation or otherwise for the current year.

§ 2662. The directors of every such corporation shall choose one of their number to be president, and shall also choose a secretary and treasurer, which two last-mentioned officers shall reside and have their place of business, and keep the books of said corporation, within this State; and shall choose such officers as the by-laws of the corporation shall prescribe, all which said officers shall hold their offices until others shall be chosen in their stead.

See § 3127. "Director" defined. § 6450. Subordinate officers. § 2667, subd. 3.

[A private corporation organized under the laws of this State must keep its place of business and corporate books in this State. For violation of this requirement its charter will be annulled. *State v. Lumber Co.*, 58 Minn. 330; s. c., 59 N. W. Rep. 1048.]

§ 2663. If any corporation organized and established under the authority of this act shall violate any of its provisions, and shall thereby become insolvent, the directors ordering or assenting to such violation shall be jointly and severally liable, in an action

founded on this statute, for all debts contracted after such violation as aforesaid.

See § 2455, and cross-references. Act 20, at pp. 48, 49.

[Where a series of acts, or a continuous course of conduct, on the part of directors in violation of above statute, finally producing the insolvency of the corporation, is begun before the debt of a creditor is contracted, the debt is one contracted "after such violation," although the series of acts or course of conduct is not completed, or the insolvency of the corporation consummated, until afterward. *Patterson v. Mfg. Co.*, 41 Minn. 84; s. c., 42 N. W. Rep. 928.

The ultra vires acts of the directors in executing accommodation paper in the corporate name, or in lending its funds to others, constitute a violation of this section. *Id.* To constitute "assent" by a director, there must be some willful violation of duty; mere negligence in not knowing what he ought to have known is not sufficient. *Id.* A creditor of the corporation may sue one or more of the directors to enforce the liability without joining all the creditors to whom they are liable, or all the directors subject to the liability. *Id.* The fact that the affairs of the corporation are in the hands of a receiver does not affect this right of action. *Id.* Not necessary that the creditor shall have obtained judgment against the corporation before suing the directors; he may, if necessary, join it with the directors as codefendant, and establish his claim against the corporation in the same action. *Id.* An action by a creditor of an insolvent corporation to enforce the liability created by above section is governed by the statutes which prescribed three years limitation in respect to actions upon "a statute for a penalty or forfeiture, where the action is given to the party aggrieved." *Bank v. Mfg. & Car Co.*, 51 N. W. Rep. 117.]

§ 2664. If the directors of any such corporation shall declare and pay a dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, knowing such corporation to be insolvent, or that such dividend would render it so, the directors assenting thereto shall be jointly and severally liable, in an action founded on this statute, for all debts due from such corporation at the time of such dividend.

Directors shall declare dividends from profits. § 2644.

### Meetings.

§ 2665. When any number of persons shall have associated according to the provisions of this act, any two of them may call the first meeting of the corporation at such time and place as they may appoint, by giving notice thereof in a newspaper published in the county in which such corporation is to be established, or if no newspaper is published in such county, in a newspaper published in an adjoining county, at least fifteen days before the time appointed for such meeting. Subsequent meetings of any such corporation may be called in such manner as its by-laws shall prescribe; Provided, That if the by-laws of any such corporation do not prescribe the manner of calling meetings



## Quorum; corporate powers — G. S., §§ 2666, 2667.

thereof, its directors may call such meetings by giving the notice provided in this section for the first meeting of such corporation, but such notice may be waived by a writing signed by all the subscribers to the capital stock of said corporation, specifying the time and place for said first meeting, which writing shall be entered at full length upon the records of the corporation, and the first meeting of any such corporation which has been held pursuant to such written waiver or notice shall be valid.

First meeting. § 3134. Stockholders may call meeting. § 2677. Quorum. § 2666. Justice of the peace may call meeting, when. § 3125. Proceeding ratified.

[If the charter or by-laws fix the time and place for holding regular meetings, no further notice to stockholders is necessary. *Morrill v. Mfg. Co.*, 53 Minn. 371; s. c., 55 N. W. Rep. 547.

The stockholders who attend, whether one or more, constitute a quorum and can transact the business, elect officers, etc. *Id.*]

§ 2666. A majority of the directors of every such corporation, convened according to the by-laws, shall constitute a quorum for the transaction of business. And a majority of the stockholders present or represented by proxy, at any legal meeting, when a majority of the stock of such corporation is so represented at the meeting, shall be capable of transacting the business of that meeting; and at all meetings of such stockholders, each share shall entitle the holder thereof, or his representative, to one vote.

See § 2665, and cross-references.

[The board of directors requires the attendance of a quorum. *Morrill v. Mfg. Co.*, 53 Minn. 371; s. c., 55 N. W. Rep. 547.

If all directors attend a meeting and participate in the business, notice of the meeting becomes immaterial. *Times Co. v. Nimocks*, 53 Minn. 381; s. c., 55 N. W. Rep. 546.

Stockholders are not disqualified to vote at stockholders' meetings, because they may have a personal interest in the matter. *Bjorngaard v. Bank*, 49 Minn. 483; s. c., 52 N. W. Rep. 48.

The minutes of a meeting of a corporation, or its board of directors, are prima facie evidence of their contents. *Heintzelman v. Relief Assn.*, 38 Minn. 138; s. c., 36 N. W. Rep. 100.

Right to vote stock by proxy discussed. *Martin v. Chute*, 34 Minn. 135; s. c., 24 N. W. Rep. 353.

Resolution adopted or declarations made at a corporate meeting are not evidence of the truth of matters so declared as against persons not members of the corporation. *Redding v. Godwin*, 44 Minn. 355; s. c., 46 N. W. Rep. 563.

Where stock is transferable only on the books, the person in whose name the stock stands is entitled to vote it. The corporate books are conclusive upon the question as to who is entitled to vote the stock. *Morrill v. Mfg. Co.*, *supra.*]

## Powers and Duties.

§ 2667. All corporations organized and established under the provisions of this act, shall be capable

1. To sue and be sued, plead and be impleaded, answer and be answered unto, ap-

pear and prosecute to final judgment in any court or elsewhere;

Office where legal process may be served must be established within State. § 2646. Jurisdiction of court over receiver. §§ 3138 et seq. Levy on property. § 2456. Removal of suits to U. S. courts. §§ 3152 et seq. Crimes against property. §§ 6379 et seq. Officers may be examined. § 5096. Pleadings. §§ 4796 et seq. Jurisdiction and proceedings in action. §§ 5554 et seq. Summons, how served, appearance. §§ 4746 et seq. Limitation of actions. § 4696. Place of trial when corporation a party. § 4714. Suits against receivers. Act of 1893, at p. 43. Criminal offenses by corporations. Act of 1895, at p. 45. Appointment of agents to receive service of summons. Act of 1895, at p. 46. Corporations dissolved continue bodies corporate for three years. § 3143. Foreign corporation to sue and be sued as domestic. § 3159. Allegation of corporate existence. § 4796. Garnishment. § 5002. Action to be brought by attorney-general, when. § 5331 et seq. Term "person" includes a corporation. § 6335. Plea by corporation. § 6784.

[A corporation may be sued for a libel published by its agents. *Pratt v. Pioneer Press Co.*, 35 Minn. 251; s. c., 28 N. W. Rep. 708.

Where defendant holds itself out to be a corporation, and contracts with plaintiff as such, it is estopped to deny its corporate existence. *Scheutler v. Grand Lodge*, 45 Minn. 250; s. c., 47 N. W. Rep. 799.

Where defendant has assumed to make the contract on which the action is brought by the name by which it is sued, it is immaterial, so far as plaintiff's right to recover is concerned, whether it is a corporation or a mere voluntary association. *Perline v. Grand Lodge*, 50 N. W. Rep. 1022.

In an action by a corporation to enforce a contract, an allegation of the answer denying plaintiff's corporate charter is immaterial. *Land Co. v. Dayton*, 39 Minn. 315; s. c., 40 N. W. Rep. 66.

Defendant having contracted with plaintiff as a corporation, he is estopped to deny its corporate existence and character in an action upon such contract. *Economizer Co. v. Denslow*, 46 Minn. 171; s. c., 48 N. W. Rep. 771.

Subscriber to corporate stock, who was a promoter of the corporate organization, and who has been a party to the subsequent proceeding in incurring liabilities and issuing the stock, is estopped to deny that the association is a corporation de facto, or that the stock so issued is valid, although the corporate organization is legally defective. *Id.*

A corporation de facto, at least where there is a law under which a corporation may be formed for such purposes, may take and hold property, and conveyances to it will be valid, except in a direct proceeding by the State to inquire into its rights to exercise corporate franchises. In an action brought by it to recover such property, no private person will be allowed to attack collaterally the regulation of its organization. *Lutheran Church v. Froislie*, 37 Minn. 447; s. c., 35 N. W. Rep. 260.

A bona fide purchaser of accommodation paper of a corporation having power to deal in mercantile paper may recover thereon from the corporation. In re *Jacoby-Mickolas Co.*, 70 N. W. Rep. 1085; *Am. Trust & Savings Bank v. Gluck*, *id.*

2. To have a common seal, and to alter the same at pleasure;

3. To elect, in such manner as they shall determine, all necessary officers; to fix their compensations, and define their duties;

Directors, election of. § 2659. Failure to elect. § 3127. Election of principal officers. § 2662.

[The appointment of an attorney at a stipulated salary per year, by board of directors of a corporation, and an acceptance of such appointment, upon the terms offered, is a consummated contract of employment, and neither party, without consent of the other, can lawfully rescind the same for at least a year. *Horn v. Land Assn.*, 22 Minn. 233.]

Person being appointed secretary of a corporation, but the compensation not being fixed, he may recover, upon a quantum meruit, the reasonable value of his services. *Rogers v. Ry. Co.*, 22 Minn. 25.

Quo warranto may be issued from the district court to an officer of a private corporation to determine his right to the corporate office he exercises. *State v. Otis*, 58 Minn. 275; s. c., 59 N. W. Rep. 1015.

Signature of secretary held not essential to validity of note. *Peatman v. Heat & Power Co.*, 69 N. W. Rep. 541.]

4. To ordain and establish by-laws for the government and regulation of their affairs, and to alter and repeal the same; and

May adopt by-laws. § 2678. Manner of calling and conducting meetings determined by by-laws. § 3129.

[Where the articles of a corporation provide for the management of its business by a board of directors, and for meetings of that board, but do not provide for meetings of the corporation, and the first by-laws were adopted by the directors, the latter have power to amend such by-laws. *Heintzelman v. Druids' Relief Assn.*, 38 Minn. 138; s. c., 36 N. W. Rep. 100.]

A corporation organized for the purpose of "buying, selling, and dealing in" all kinds of fuel, etc., and to do any and all things that may legally be done to promote the interest of the corporation and its stockholders, the capital stock of which is held by various dealers in fuel, has no power under its articles of incorporation to make by-laws fixing a price for fuel, and prohibiting its stockholders in their individual business from having more than one office, or selling below the price fixed. *Kolff v. Fuel Exchange*, 50 N. W. Rep. 1036.]

5. To employ all such agents, mechanics and other laborers as they shall think proper.

Employers prohibited from requiring surrender of rights of citizenship. Act of 1893, at p. 41. Blacklisting and coercing of employees prohibited. Act of 1895, at p. 47. Penalty for coercing employees. Act of 1895, at p. 47.

§ 2668. Every such corporation shall, by its corporate name, have power to acquire and hold such lands, tenements and hereditaments, and such property of every kind, as shall be necessary for the purpose of said corporation; and such other lands, tenements and hereditaments as shall be taken in payment of, or as security for, debts due to such corporation, and to manage and dispose of the same at pleasure.

See §§ 2645, 2679, 3128. Deeds, mortgages and other conveyances. §§ 4110, 4111. Restriction of ownership to citizens. §§ 3907 et seq.

[A de facto corporation may take and hold property, and conveyances to it will be valid, except in a direct proceeding by the State to inquire into its right to exercise corporate franchises. *Lutheran Church v. Froislie*, 37 Minn. 447; s. c., 35 N. W. Rep. 260.]

Certain stockholders being parties to a fraudulent contract by the corporation, a court of equity will not grant them affirmative relief therefrom. *Weed v. Little Falls, etc., Co.*, 31 Minn. 154; s. c., 16 N. W. Rep. 851.

The mere fact that one is the attorney and a stockholder of a corporation does not charge him with constructive notice of a contract of the corporation and its breach. *Tarbox v. Gorman*, 31 Minn. 62; s. c., 16 N. W. Rep. 466.]

§ 2669. The books of every such corporation, containing their accounts, shall be kept, and shall at all reasonable times be open in the county where such corporation is located, or at the office of the treasurer within this State, for the inspection of any of the stockholders of said corporation; and said stockholders shall have access to the books and statements of said corporation, and shall have the right to examine the same in said county or at said office; and as often as once a year a true statement of the accounts of said corporation shall be made and exhibited to the stockholders by order of the directors.

See §§ 2454, 2464, 2644, and cross-references.

[An entry in books of a corporation, regularly made, is competent evidence in behalf of the corporation. *Schell v. Bank*, 14 Minn. 43.]

§ 2670. The certificate required by the ninth, twelfth and seventeenth sections of this act,\* shall be made under oath or affirmation, by the person subscribing the same; and if any person shall knowingly swear or affirm falsely as to any material facts, he shall be deemed guilty of perjury, and be punished accordingly.

Certificate to contain what. § 2652. Certificate on amendment to contain what. § 2648.

§ 2671. If the president, directors or secretary of any such corporation shall intentionally neglect or refuse to comply with the provisions of this act, and to perform the duties therein required of them respectively, such of them as so neglect or refuse shall be jointly and severally liable, in an action founded on this statute, for all debts of such corporation contracted during the period of any such neglect or refusal.

See § 2663, and cross-references.

### Mining and Manufacturing.

§ 2672. Any number of persons not less than three (3), desiring to form a corporation for the purpose of mining, smelting, reducing, refining or working ores or minerals, or for working coal mines or stone quarries and

\*§§ 2652, 2656.



Mining, etc., companies; articles; capital stock; by-laws — G. S., §§ 2673-2678.

marketing the material, or for manufacturing brick or stone or iron, steel, copper or other metals, or for the purpose of buying, working, selling and dealing in mineral or other lands, or for the whole or any part of said purposes, may do so upon complying with the provisions of this act; and any corporation so formed shall be entitled to the rights and privileges and be subject to the duties and obligations herein prescribed, and shall have perpetual succession.

§ 2673. This act may be altered or amended at the pleasure of the legislature, but not so as to divest or impair any right of property acquired under the same.

See Const., art. I, § 11.

[An amendment by the legislature of the charter of a corporation, increasing the number of directors from five to nine, is not a fundamental alteration, and may, therefore, be effectually accepted by a majority of the stockholders. *Mower v. Staples*, 32 Minn. 284; s. c., 20 N. W. Rep. 225.]

§ 2674. Such persons shall sign and severally acknowledge articles of incorporation, which shall declare that they do thereby associate together and agree upon said articles for the purpose of forming a corporation under the provisions of this act, and which said articles shall also contain —

First. The name of the corporation, which shall not be the same as that previously assumed by any other corporation in this State.

Second. The general nature of the business to be carried on, and the place of the principal office or headquarters of the company.

Third. The names and places of residence of the persons so associating to form such corporation.

Fourth. The amount of the capital stock of said corporation.

§ 2675. Such articles shall be executed in duplicate, one of which shall be deposited for record in the office of the register of deeds of the county where said company shall establish its principal office, and the other with the secretary of State.

And upon being so deposited, said corporation shall be deemed to exist under this act, for the purposes specified in said articles, as a manufacturing and mechanical corporation, under the Constitution and laws of this State; and may sue and be sued in the corporate name, and in such corporate name may contract and be contracted with, and transact and carry on the business mentioned in said articles; and may purchase, acquire, hold, use, sell, transfer, convey, rent and lease all such real and personal property and effects as may be necessary or convenient for the purposes of said corporation.

A certified copy of said articles, from the said register of deeds or from the secretary of State, shall be evidence, in all courts, of such corporation.

Said articles of incorporation may be amended at any time in any respect within the purview of this act, by a majority vote in amount of the stockholders, and by depositing such amendment for record in the office where the articles of incorporation are deposited for record.

See § 2647, and cross-references.

### Capital Stock.

§ 2676. (As amended, L. 1897, ch. 249, approved April 23, 1897.) The amount of capital stock of every such corporation shall be fixed and limited by the stockholders in their articles of association and shall be divided into shares of not less than ten and not more than one hundred dollars each, but every such corporation may increase its capital stock and number of shares therein at any meeting of the stockholders specially named for that purpose.

See § 2642, and cross-references.

§ 2677. The stock of any such corporation shall be deemed personal property, and may be issued, sold and transferred as may be prescribed by resolution or by-laws of said corporation or its managing board; but no stock so issued or sold, purporting to be full paid, shall be subject to any further assessment in the hands of the lawful holder thereof, without his consent. Upon the issuance of stock, the lawful holders thereof shall constitute the members of such corporation, and a majority in amount thereof may call a meeting of the stockholders at any time, irrespective of any by-laws, at the principal office of the company, or at the capital of the State, upon giving thirty days' notice by publication in a newspaper published at the place of such office, if there be such paper, and if not, then a paper published at the capital.

See §§ 2454, 2643, 2665, and cross-references. Personal property defined. § 1384.

[A conditional sale of stock by a corporation, with an option to the purchaser to revoke, held not ultra vires. *Vent v. Coffee & Spice Co.*, 67 N. W. Rep. 70.]

### Powers and Duties.

§ 2678. Such corporation may prescribe and adopt by-laws for the management of its business and affairs by a board of directors, trustees, committee, or other officers or agents, and provided for their election or appointments, and prescribe their duties, and may require bond from any officer for the faithful discharge of duties, and may by such by-laws prescribe in respect to all matters appertaining to the business and affairs



Mining, etc., companies; property: meetings out of state — G. S., §§ 2679-2682.

of said corporation, not inconsistent with the provisions of this act, nor the Constitution or laws of this State. Such by-laws may be made, altered or amended by the directors, trustees or committee clothed with the general management of the affairs of such corporation; but the stockholders, at any regular meeting, may repeal or alter any by-law, or adopt new ones, and such action shall remain binding until repealed or changed by the stockholders themselves at some regular meeting. Such corporation shall keep a record of all proceedings had at meetings of stockholders, and also of all proceedings had or taken by the board of directors, trustees or committee having charge of its affairs, and such record shall be subject to the inspection of all stockholders at all reasonable times. A copy of all by-laws, duly certified, and all amendments and alterations of the same, shall be filed for record with the register of deeds where said articles of incorporation are recorded, and also with the secretary of State, and shall not become operative or valid until so filed. Until otherwise provided, the persons executing such articles of incorporation shall constitute a board of directors, with full power and authority to make by-laws, and manage the affairs and business of such corporation.

Directors, election of. § 2659, and cross-references. Power to adopt by-laws. § 2667, subd. 4.

§ 2679. Any corporation organized under this act may mortgage, sell or lease its real estate, or any part thereof, if authorized or approved by a majority in amount of its stockholders, but not otherwise.

See §§ 2645, 2668, 3128. Deeds, mortgages and other conveyances. §§ 4110, 4111. Transfers of property validated. Act of 1895, at p. 47.

§ 2680. Any corporation organized under this act may take, acquire and hold stock in any other corporation, if a majority in amount of the stockholders shall so elect.

§ 2681. The directors or managing officers of any such corporation may meet and transact business without this State, as may also the stockholders, by by-laws therefor; and offices may be established without this State for the transaction of business; Provided, That an office shall always be maintained in this State, where legal process may be served on such corporation; and such service upon an officer or director, if personally made, shall be deemed personal service upon the corporation.

See § 2646. Act of 1895, at p. 47.

§ 2682. Any officer of any corporation organized under this act, or any other person or persons, who shall fraudulently issue or

cause to be so issued, any stock, scrip, or evidence of debt of such corporation, or who shall sell or offer for sale, hypothecate, or otherwise dispose of any such stock, scrip, or other evidence of debt, knowing the same to be so fraudulently issued shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by imprisonment in the State prison not more than ten nor less than one year.

Issuance of capital stock. § 3130. See § 6446. Officer selling forged scrip guilty of forgery. § 6379.

#### TITLE VIII. GENERAL PROVISIONS. POWERS.

- Sec. 3127. General powers; meeting outside of State; failure to elect officers; classify directors; hold over.  
3128. May convey land.  
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#### *Capital Stock.*

- Sec. 3130. Issuance of.  
3131. Subscription to.  
3132. Held by fiduciary; right to vote.  
3133. Same; not personally liable.

#### *Meetings.*

- Sec. 3134. First meeting.  
3135. Call by justice of peace, when.  
3136. Powers at such meeting.  
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- Sec. 3138. Appointment.  
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#### *Examination of Corporations.*

- Sec. 3144. By attorney-general and legislature.

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#### *Form of Certificate of Incorporation.*

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- Sec. 3149. Amount; when payable.  
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General provisions; powers; by-laws; capital stock — G. S., §§ 3127-3130.

*Removal of Suits to United States Courts.*

- Sec. 3152. Penalties.  
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**General Provisions. Powers.**

§ 3127. All corporations, when no other provision is specially made, may have a common seal, which they may alter at pleasure; they may elect all necessary officers, fix their compensation, and define their duties and obligations; and make by-laws and regulations, consistent with the laws of the State, for their own government, and for the due and orderly conduct of their affairs, and the management of their property.

The members of any corporation now or hereafter organized under the provisions of this chapter, and the directors and managers thereof, may meet and transact business without the State the same as within the State.

But no corporation or association created or existing or which shall exist, under this act, shall cease or expire from neglect on the part of the corporation to elect directors or officers at the time mentioned in their by-laws; and all officers elected by such corporation or association shall hold their offices until their successors are duly elected.

Any corporation in this State, whether created by special act or organized under any general or special law of the territory or State of Minnesota, or doing business within this State by virtue of or under any legislative enactment of said territory or State, may, by resolution of its board of directors, classify its directors into three classes, each of which shall be composed as nearly as may be of one-third (1-3) of the whole number of directors, the term of office of the first class to expire at the date of the next annual election thereafter; of the second class, at the date of the second annual election thereafter; of the third class, at the date of the third annual election thereafter. At each annual election thereafter a number of directors shall be elected for three (3) years equal to the number whose term of office shall then expire; all other vacancies shall be filled in accordance with the by-laws.

Provided, That if no election be had at the time of holding the annual election, the old directors shall hold their offices until their successors are elected and enter upon their duties.

See § 2667.

[A corporation has no other powers than those conferred by the statute creating it. Powers not conferred are deemed to be denied. *Ins. Co. v. Martin*, 13 Minn. 59.

Trading corporations may give promissory notes for an indebtedness contracted within the scope of their power, and the presumption is that notes given by such corporations are for such indebtedness. *Gebhard v. Eastman*, 7 Minn. 56.

So also a manufacturing corporation. *Sullivan v. Murphy*, 23 Minn. 6.

The authority of the president of a corporation to sign notes in its name does not extend to making one for the accommodation of a firm of which he is a member. *Bank v. Lumber Co.*, 44 Minn. 65; s. c., 46 N. W. Rep. 145.

When a corporation has power to incur debts to a limited extent, and to issue negotiable notes therefor, a bona fide holder of such notes may recover thereon, though the notes sued on exceed the limit of the indebtedness which the corporation may incur under its charter. *Auerbach v. Mill Co.*, 28 Minn. 291; s. c., 9 N. W. Rep. 799.

§ 3128. Every corporation may convey lands to which it has a legal title.

See § 2645, and cross-references.

§ 3129. Corporations may, by their by-laws, where no other provision is specially made, determine the manner of calling and conducting their meetings, the number of members that shall constitute a quorum, the number of shares that shall entitle the members to one or more votes, the mode of voting by proxy, the mode of selling shares for the non-payment of assessments, and the tenure of office of the several officers. They may annex suitable penalties to such by-laws, not exceeding twenty dollars for one offense.

See § 2667, subd. 4, and cross-references.

**Capital Stock.**

§ 3130. (As amended April 20, 1891.) Corporations having capital stock divided into shares, unless specially authorized, shall not issue any shares for a less amount to be actually paid in on each share than the par value of the shares first issued: Provided, That railroad, and navigation, and manufacturing corporations, and corporations for buying, holding, improving, selling, and dealing in lands, tenements, hereditaments, real, mixed, and personal estate and property, created or organized under this chapter, or under any charter or special act of incorporation heretofore passed, shall have power to create, issue and dispose of such an amount of special, preferred or full paid stock of the capital stock of such corporation as may be deemed advisable by the board of directors of such corporation.

Provided, That any corporation may, by its articles of incorporation or by any amended article of its articles of incorporation, provide for special, preferred and common stock, or special or preferred and common stock, of the capital stock of such corporation; and any corporation heretofore

or hereafter organized without changing its articles of incorporation may issue its capital stock as a part special and a part preferred and a part common, or a part common and a part either special or preferred, by direction of its board of directors, when so authorized by a majority of its stockholders at its annual meeting or at a meeting called for that purpose; and said board of directors, when so authorized by said meeting of said stockholders, may give such preference as it may deem best to such special or preferred stock, or such special and preferred stock.

Amount of capital stock. § 2642. Officer issuing forged scrip. § 6379.

[By agreement of all stockholders, certain unissued stock was paid for with corporate funds, and issued to one of the stockholders, to be held in trust for all stockholders, in proportion to the amounts of their stock. There being no creditors of the corporation, such issue was valid, and directors had no authority afterward to order the stock to be sold. *Jones v. Morrison*, 31 Minn. 140; s. c., 16 N. W. Rep. 854.

Nature of capital stock, and power of the corporation to use and dispose of it. *Hospes v. Mfg. & Car Co.*, 50 N. W. Rep. 1117.

Upon the increase of capital stock, each stockholder has a right to an opportunity to take the new stock in proportion to the old stock held by him; and a vote at a stockholders' meeting directing the new stock to be sold, without giving a stockholder such opportunity, is void as to him unless he consents to it. *Jones v. Morrison*, supra.]

§ 3131. If any subscriber for the stock of any corporation neglects to pay any installment of his subscription when lawfully required by the directors or other managing officer of the corporation, he shall forfeit such stock, and the same may be sold in such manner as the directors in their by-laws prescribe, and after paying the amount of the installment due or called for, and the expenses of sale, the balance of the proceeds of such sale shall be paid to such subscriber. An action may also be maintained against such subscriber upon his subscription.

See § 2655. Private property of stockholder liable for. § 2455.

[A subscription to stock, where the company undertakes nothing, not even to deliver the shares, is without consideration, and cannot be enforced. *Mining Co. v. Martin*, 13 Minn. 417.

And the mere fact that defendant signed a subscription to the capital stock with others will not supply the want of a consideration moving from the company. *Id.*

A subscription by a number of persons to the stock of a corporation thereafter to be formed by them constitutes a contract between the subscribers to become stockholders when the corporation is formed, upon the conditions expressed in the agreement, and is irrevocable from date of subscription; and is in the nature of a continuing offer to the proposed corporation, which, upon acceptance by it, becomes as to each subscriber a contract between him and the corporation. *Thrashing Mach. Co. v. Davis*, 40 Minn. 110; s. c., 41 N. W. Rep. 1026.

And a delivery of a subscription by a subscriber to a promoter is a complete delivery, so that it becomes eo instanti a binding contract as between the subscribers. *Id.*

And such subscriber, after so delivering his subscription to a promoter, and after the corporation is organized and large sums of money have been expended by it, will not be allowed to defeat a recovery by showing that he attached a secret oral condition to the delivery. *Id.*

Defendant's liability on his subscription was held to attach at the time of its acceptance by board of directors of the plaintiff corporation, and certain conditions of the subscription were not precedent to the plaintiff's right to assess the stock so subscribed and collect the assessments. *Hotel Co. v. Friedrich*, 26 Minn. 112; s. c., 1 N. W. Rep. 827.

A subscription to preferred stock held to be a valid contract both on the part of the subscriber and the company. *St. Paul, etc., Co. v. Robbins*, 23 Minn. 439.

Complaint to enforce calls for payment of subscriptions to stock, held good. *Machine Co. v. Crevier*, 39 Minn. 417; s. c., 40 N. W. Rep. 507.

In an action for unpaid installments on a stock subscription other than for the last installment, it is unnecessary to allege the issuance and delivery or tender of the shares of stock mentioned. *Harvester Works v. Libby*, 24 Minn. 327.

In an action by the assignee of an unpaid stock subscription to recover the same, complaint held insufficient. *Id.*

It is no defense to an action on a subscription for stock that the corporation has not delivered or tendered the certificate of stock, as the certificate is not the stock itself, but only a convenient representative of it. *Electric Co. v. Dixon*, 46 Minn. 463; s. c., 49 N. W. Rep. 244.

A provision in the charter that a certain amount of each share should be paid by each subscriber at the time of subscription may be waived by the corporation at pleasure. *Ry. Co. v. Bassett*, 20 Minn. 535.

A subscriber to capital stock is estopped in an action on the subscription to deny the power of the corporation to make the contract. *Electric Co. v. Dixon*, supra.]

§ 3132. An executor, administrator, guardian or trustee shall represent the shares of stock in his hands at all meetings of the corporation, and may vote as a stockholder.

§ 3133. Persons holding stock in a corporation as executors, administrators, guardians or trustees shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in the trust fund would be, if they were respectively living and competent to act, and held the stock in their own names.

See § 2455, and cross-references.

[When a corporation cannot compel executor of one of its shareholders to deliver up certificates of stock for cancellation. *Lumber Co. v. Mittlestadt*, 43 Minn. 91; s. c., 44 N. W. Rep. 1079.]

## Meetings.

§ 3134. The first meeting of all corporations, when no other provision is specially made, shall be called by notice, signed by one or more of the persons named in, or associated as incorporators under, the law by which it is incorporated, setting forth the time, place and purposes of the meeting; and such notice shall, at least twenty days before the meeting, be delivered to each member, or published in some newspaper in the county



Meetings; receivers; distribution of assets, etc.; dissolution — G. S., §§ 3135-3142.

where the corporation is established, or if no newspaper is published in the county, then in some newspaper printed and published at the capital of the State.

Meetings in general. § 2665, and cross-references.

[In absence of actual fraudulent intent, notice of meeting of stockholders or directors, given for the requisite time, is sufficient, even as to stockholder or director absent from country. *Jones v. Morrison*, 31 Minn. 140; s. c., 16 N. W. Rep. 554.]

§ 3135. When, by reason of the death, absence, or other legal impediment of the officers of the corporation, there is no person duly authorized to call or preside at a legal meeting thereof, any justice of the peace of the county where such corporation is established, may, on a written application of three or more of the members, issue a warrant to either of them, directing him to call a meeting, by giving such notice as had been previously required by law; and the justice may, in the same warrant, direct such person to preside at such meeting, until a clerk is duly chosen and qualified, if no officer is present duly authorized to preside.

See § 2665, and cross-references.

§ 3136. A corporation, when so assembled, may elect officers to fill all vacancies, and act upon such other business as may lawfully be transacted at a regular meeting.

§ 3137. When all the members of a corporation are present at any meeting, however called or notified, and sign a written assent thereto, on the record of such meeting, the doings of such meeting shall be as valid as if legally called and notified.

See § 2665, and cross-references.

### Receiver.

§ 3138. When the charter of a corporation expires or is annulled, or the corporation is dissolved as provided herein, the district court of the county in which such corporation carries on its business, or has its principal place of business, on application of a creditor, stockholder or member, at any time within said three years, may appoint one or more persons receivers or trustees, to take charge of its estate and effects, and to collect the debts and property due and belonging to it, with power to prosecute and defend actions in the name of the corporation or otherwise, to appoint agents under them, and to do all other acts which might be done by such corporation if in being, that are necessary to the final settlement of the unfinished business of the corporation. The powers of such receivers may be continued

as long as the court deems necessary for said purposes.

Appointment of receiver. §§ 5565, 5341. Suits against receivers provided for. Act of 1893, at p. 43. Receiver may be appointed, when. § 5044.

[In proceedings under sections 3138 et seq. the constitutional or statutory liability for corporate debts cannot be enforced. In re Ins. Co., 56 Minn. 180; s. c., 57 N. W. Rep. 468.]

Where a general assignment of corporate assets for the benefit of creditors has been made, creditors are not entitled as of right to the appointment of a receiver to supercede the assigning, but they may maintain an action to enforce the personal liability of stockholder. *Trust Co. v. Loan & Trust Co.*, 65 N. W. Rep. 78.]

§ 3139. Said court shall have jurisdiction, in equity, of the application, and of all questions arising in the proceedings thereon; and may make such orders, injunctions and judgments therein as justice and equity require.

§ 3140. The receivers shall pay all debts due from the corporation, if the funds in their hands are sufficient therefor; and if not, they shall distribute the same ratably among the creditors who prove their debts in the manner created by the court.

Suits against receivers. Act of 1893, at p. . Receiver, when appointed. § 3138.

§ 3141. If there is a balance remaining, after the payment of the debts, the receiver shall distribute and pay it to and among those who are justly entitled thereto, as having been stockholders or members of the corporation, or their legal representatives.

Duties of receiver. § 3140.

§ 3142. When a majority in number or interest of the members of a corporation desires to close their concerns, they may apply by petition to the district court of the county where the corporation has its principal place of business, setting forth in substance the grounds of their application; and the court, after such notice as it deems proper to all parties interested, may proceed to hear the matter, and, for reasonable cause, adjudge a dissolution of the corporation. Corporations so dissolved shall be deemed and held extinct, in all respects, as if their charters had expired by their own limitation.

Provided, That in case of the dissolution, under this section, of any bank incorporated under the laws of this State, a duly certified copy of the order of the court adjudging such dissolution shall be at once transmitted by said court to the State auditor or other officer having power to authorize the existence of banks, and such copy of such order shall be duly filed in the office of such State officer.

Corporation may be dissolved by court. § 3340.

## Examination of corporations; amendment; defective organization — G. S., §§ 3143-3146.

[Where the corporation is dissolved during the term of a lease, and it is disabled from performing under the lease, a cause of action accrues to the landlord for the recovery of all damages sustained thereby. *Kalkhoff v. Nelson*, 62 N. W. Rep. 332.]

§ 3143. Corporations whose charters expire by their own limitation, or are annulled by forfeiture or otherwise, shall, nevertheless, continue bodies corporate for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending actions by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which they were established.

## Examination of Corporations.

§ 3144. The attorney-general, whenever required by the governor, shall examine into the affairs and condition of any corporation in this State, and report such examination in writing, together with a detailed statement of facts, to the governor, who shall lay the same before the legislature; and for that purpose the said attorney-general has power to administer all necessary oaths to the directors and officers of any corporation; and to examine them on oath in relation to the affairs and condition thereof, and to examine the vaults, books, papers and documents belonging to such corporation, or pertaining to its affairs and condition; and the legislature, or either branch thereof, has full power to examine into the affairs and condition of any corporation in this State, and at all times, and for that purpose any committee appointed by the legislature, or either branch thereof, shall have full power to administer all necessary oaths to the directors, officers and stockholders of said corporation, and to examine them on oath in relation to the affairs and condition thereof, and to examine the vaults, papers, and documents belonging to such corporation, or pertaining to its affairs and condition, and to compel the production of all keys, books, papers and documents.

A record to be kept. § 2644. Books open to inspection. § 2669.

## Amendment of Articles of Incorporation.

§ 3145. (As amended by L. 1897, ch. 12, approved February 19, 1897.) Any corporation, heretofore or hereafter organized under any general law of this State, may amend its articles of incorporation in any respect which might have been made part of said original articles, and may renew the term of its corporate existence from time to time, not exceeding the term originally limited

therefor, by adopting a resolution expressing such proposed amendment or renewal, by a two-thirds (2-3) vote of all its members, shareholders, or stockholders present and voting at any regular meeting of such corporation or at any special meeting called for that purpose, and clearly specifying the same and outlining the proposed amendment, and filing and publishing such resolution in the manner provided for filing and publishing its original articles.

Provided, This act shall not apply to corporations heretofore organized under title one (1) of chapter thirty-four (34) of general statutes of one thousand eight hundred and ninety-four (1894).\*

See § 2647, and cross-references.

## Defective Organization Cured.

§ 3146. That in case where there has been heretofore an attempted formation and organization or renewal of any corporation under any of the general laws of this State, and the persons attempting to form or organize or renew any corporation, have actually adopted, signed and filed in the office of the secretary of State, articles of association, in which the business specified to be carried on by them as such corporation was such as might lawfully be carried on under said laws, and have, in fact, proceeded as such corporation under the corporate name assumed by them, to transact and carry on such business, and in the pursuit thereof have in good faith received and transferred by conveyance, to or from such body corporate, in such corporate name, any property, real or personal; such attempted formation and organization or renewal, in each and every such case, is hereby legalized and declared a valid and effectual formation and organization or renewal of a corporation under the name assumed from and after the time of the actual filing, as aforesaid, of such articles, notwithstanding the omission of any other matter or thing by law prescribed to be done or observed in the formation, organization or renewal thereof, and any and all conveyances of property, real or personal, in good faith and lawful form, made to or by any such body in the corporate name so assumed, are hereby legalized and declared as valid and effectual for the purposes intended thereby, as if such body corporate had been originally, in all things, duly and legally incorporated: Provided, That no such corporation, nor any of the acts or doings thereof, shall be or are hereby validated, unless such so-called corporation has filed in the office of the secretary of State, and also in the office of the register of deeds of the county in which is the principal place

\*Proviso relates to corporations empowered to take private property.

## Certificate of incorporation; fees for certificate — G. S., §§ 3147-3151.

of business of said corporation its articles of incorporation; And provided further, Nothing in this act shall be construed to discharge any liability of any person upon any contract of said corporation heretofore made in its articles of incorporation.

See Act of 1891, at p. 40. Certain corporations legalized. Act of 1895, at p. 47.

**Form of Certificate of Incorporation.**

§ 3147. Whenever any corporation hereafter organized under the general law of this State shall have complied with all the provisions of the general statutes in regard to the filing for record of the articles of incorporation of such corporation and of the requisite affidavit of proof of publication, the secretary of State shall thereupon issue a certificate in the following form:

State of Minnesota:—

Be it known, that whereas (here the names of the subscribers to the articles of incorporation shall be inserted), have associated themselves with the intention of forming a corporation under the name of (here the name of the corporation shall be inserted), for the purpose (here the purpose declared in the articles of incorporation shall be inserted), with a capital of (here the amount of capital fixed in the articles of incorporation shall be inserted), and have complied with the statutes of this State in such case made and provided, as appears from the articles of incorporation, and the affidavit of proof of publication filed in this office; now, therefore, I (here the name of the secretary shall be inserted), secretary of the State of Minnesota, do hereby certify that said (here the names of the subscribers to the articles of incorporation shall be inserted), their associates and successors, are legally organized and established as, and are hereby made an existing corporation under the name of (here the name of the incorporation shall be inserted), with the powers, rights and privileges and subject to the limitations, duties and restrictions which by law appertain thereto. Witness my official signature hereunto subscribed and the seal of the State of Minnesota hereunto fixed this ..... day of ..... in the year ..... (in these blanks the day, month and year of execution of this certificate shall be inserted).

The secretary shall sign the same and cause the seal of the State to be thereto affixed, and such certificate shall be prima facie evidence of the existence of such corporation. He shall also cause a record of such certificate to be made, and a certified copy of such record may be given in evidence with the like effect as the original certificate.

§ 3148. Whenever any corporation already incorporated under the provisions of said

chapter thirty-four (34) shall have complied with the provisions of said chapter thirty-four in regard to the filing for record of the articles of incorporation and of the requisite affidavit of proof of publication, and shall make application for such certificate and shall pay one (1) dollar therefor, the secretary of State shall thereupon issue a certificate in the form prescribed in the preceding section. And such certificate shall have the same force and effect in all respects, and a certified copy thereof the same force and effect, as if such certificate had been issued to a corporation incorporated subsequent to the passage of this act. And the secretary shall keep a record of all such certificates issued.

**Fees for Certificate.**

§ 3149. That no corporation or association, other than those formed for religious, educational, social or charitable purposes, and building and loan societies, and corporations for the manufacture of butter, cheese, or other dairy products, and workmen's co operative associations, and township mutual fire insurance companies, shall hereafter be created or organized under the laws of this State, unless the persons named as incorporators therein, shall, at or before the filing of the articles of association or incorporation pay into the State treasury the sum of fifty (50) dollars for the first (1st) fifty thousand (50,000) dollars, or fraction thereof of the capital stock of such corporation or association, and the further sum of five (5) dollars for every additional ten thousand (10,000) or fraction thereof of its capital stock.

See § 2642, and cross-references.

[Above section applied. State v. R. R. Co., 43 Minn. 17.]

§ 3150. No increase of the capital stock of any corporation or association heretofore or hereafter formed, other than those excepted in section one (1) of this act, shall be valid or effectual until such corporation or association shall have paid into the State treasury the sum of five (5) dollars for every ten thousand (10,000) dollars, or fraction thereof, of such increase in the capital stock of such corporation or association.

See § 2654, and cross-references.

§ 3151. (As amended March 25, 1891.) It shall be the duty of every corporation or association hereafter organized, or which shall hereafter increase its capital stock, to file with the secretary of State, at the time of filing the articles of association or instrument evidencing such increase, a duplicate receipt of the State treasurer for the payments herein required to be made; which



## Removal of suits to United States courts by foreign corporations — G. S., §§ 3152-3157.

receipt, in duplicate, is hereby made the duty of such treasurer to furnish. Provided, None of the provisions of this act shall apply to any manufacturing corporation or association whose articles provide that its functions shall be limited to the business of manufacturing and to business essential thereto. Provided further, That none of the provisions shall apply to or in any manner affect corporations which may be organized for the purpose of raising and improving live stock, cultivating and improving farm, garden or horticultural lands, growing sugar beets, or any corporation formed or created for the purpose of canning fruit or vegetables, or the local telephone companies connecting towns or villages of less than two thousand (2,000) inhabitants each.

See § 2654, and cross-references.

## Removal of Suits to United States Courts.

§ 3152. Where, by the general or special laws of this State, relating or in any way appertaining to any foreign corporation, it is provided in substance or effect that in suits and proceedings upon causes of action arising in this State, in which such corporation shall be a party, such corporation shall be deemed to be a domestic corporation, it is hereby provided, that if such corporation shall make application to remove any such suit or proceedings into the United States circuit, or district or federal court, it shall be liable to a penalty of not less than one hundred dollars (\$100) nor more than ten thousand dollars (\$10,000) for each application so made and for each offense so commuted for making such application, the same to be recovered by suit in the name of the State of Minnesota. The county attorney of the proper county may, and the attorney-general, upon any complaint being made to him, shall institute the necessary action to recover such penalty.

[Above section construed. *Ins. Co. v. Brown*, 36 Minn. 108; s. c., 31 N. W. Rep. 54.]

§ 3153. In addition to the penalty above prescribed, such corporation shall forfeit all right to transact business within this State, and shall be liable to a penalty of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) per day for each and every day that it shall do business within this State after such forfeiture, which penalty shall be collected in the manner provided for in the above and preceding section.

§ 3154. If any insurance company or association shall make application to remove any case from the State court into the United States district, circuit or federal court, or to any act or thing not authorized by law, all right of such company or association to

transact any business whatever in this State shall cease; and it shall be the duty of the insurance commissioner, if the certificate mentioned in section three (3) of this act\* has been issued to such company or association, to revoke the same.

§ 3155. If any insurance company or association shall make application to remove any case from the State court into the United States circuit or district or federal court, for each such application it shall be liable to the penalty provided for in section one (1) of this act,† to be collected as therein provided for; and if such company or association shall, when not duly authorized, do or transact any business within this State, it shall forfeit and be liable to the penalty provided for in section two (2) of this act,‡ to be collected as therein provided.

§ 3156. Whenever any foreign corporation doing business in this State shall transfer any case from a State to a federal court, contrary to the provisions of this act, it shall thereby forfeit any permission or license, express or implied, heretofore granted, obtained or enjoyed, or hereafter to be granted, obtained or enjoyed, to do business in this State, and it shall thereafter be unlawful for any such company to do any business whatever in this State, and all rights, privileges, immunities or franchises heretofore granted to or enjoyed by, or which shall hereafter be granted to or enjoyed by any such company, shall thereupon and thereby be and stand revoked, denied and withdrawn. Every contract made by any such company, after its right to do business in this State shall have terminated as herein provided, shall be null and void. Provided, however, That such contract may be enforced by and in favor of any person who entered into said contract in good faith and without notice that said company's right to do business in this State had ceased. It shall be unlawful for any such railway company, after having taken a transfer of any case whereby, under the provisions of this act, its right to do business in this State shall have terminated, to run any locomotive, car or train of cars on any railway in this State, and it shall be liable for all damages done by it in the performance of said unlawful act to any person or property.

§ 3157. Whenever any case shall be transferred by any corporation the clerk of the court from which the transfer is taken shall immediately make a certified copy of the pleadings therein, and of the petition for removal, and of the order of removal, if any, and a certificate of the date of the filing of the petition, and of the date of the order of removal, if any, and transmit the same to the railroad commissioner of this State,

\*Certificate required of insurance companies by § 2930 of the statutes.

† § 3152.

‡ § 3153.

Foreign corporations; drainage; ownership, etc.—G. S., §§ 3158, 3159, 3734, 3999, 4110.

if the removal is taken by a railway or telegraph company, and to the commissioner of insurance, if the removal is taken by an insurance company, and to the secretary of State, if the removal is taken by any other company. Said officer shall preserve said papers in a convenient form for reference.

§ 3158. No foreign corporation now or hereafter doing business in this State shall have, possess or exercise any right, privileges or immunities not possessed by domestic corporations; but unless otherwise provided by law shall, in all respects, be deemed, if it shall remain in (this) State for sixty days next ensuing after the passage of this act, to be a domestic corporation, and entitled to all the rights, privileges and immunities of domestic corporations, subject to all laws of this State which are now in force or may be hereafter enacted.

[The charter of an insolvent corporation constitutes the contract between it and its non-resident stockholders. The general laws of the State where it was incorporated relating to the prosecution of the remedy will govern only in that State. *Guilford v. W. U. Tel. Co.*, 59 Minn. 332; s. c., 61 N. W. Rep. 324.

A resident stockholder cannot maintain an action here against a foreign corporation to obtain duplicate certificates of his stock in place of certificates he has casually lost. *Id.*]

§ 3159. No foreign corporation shall commence, prosecute or maintain any action, suit or proceeding upon any cause of action arising within this State in the United States circuit, district or federal court, nor make application to remove any such a claim, suit or proceeding into any federal court nor do any other act not permitted to a domestic corporation. Any corporation that shall violate any of the provisions of this section shall forfeit and be liable to the penalty provided in section one (1) of this act,\* to be collected as therein provided for; and if any such corporation shall thereafter transact any business within this State it shall forfeit and be liable to the penalty (provided) in section two (2) of this act,† to be recovered as herein provided.

§ 3160. Nothing in this act shall be construed to deny to any foreign corporation any right of removal or lay any penalty upon any removal taken by it which it might have taken had it been a domestic corporation.

## CHAPTER XL.

### Drainage and Drains.

#### TITLE I. DRAINAGE OF WET OR OVERFLOWED LANDS.

Sec. 3734. Corporations may sign petition for drainage.

§ 3734. Any railroad company or other corporation owning lands or other property that

will be affected by the organization of any subdrainage district as provided for in this act, may sign the petition for the organization of such subdrainage district, by such officer or officers as are by the charter or by-laws empowered to make contracts for such railroad company or other corporation.

## CHAPTER L.

### Estates in Real Property. Restriction of Ownership to Citizens.

Sec. 3997. Restrictions on corporations.

3998. Same.

3999. Forfeiture.

§ 3997. No corporation or association more than twenty per centum of the stock of which is or may be owned by any person or persons, corporation or corporations, association or associations not citizens of the United States, shall thereafter acquire, or shall hold or own any real estate hereafter acquired in this State.

See § 2668, and cross-references.

§ 3998. No corporation other than those organized for the construction or operation of railways, canals or turnpikes, shall acquire, hold or own, over five thousand acres of land, so hereafter acquired in this State; and no railroad, canal or turnpike corporation shall hereafter acquire, hold or own lands so hereafter acquired in this State other than as may be necessary for the proper operation of its railroad, canal or turnpike, except such lands as may have been granted to it by act of congress or of the legislature of this State.

§ 3999. All property acquired, held or owned in violation of the provisions of this act shall be forfeited to this State, and it shall be the duty of the attorney-general of the State to enforce every such forfeiture by due process of law.

## CHAPTER LV.

### Deeds, Mortgages and other Conveyances.

#### TITLE I. REGULAR CONVEYANCES.

Sec. 4110. Corporations may convey by agent.

4111. Conveyance by corporations.

§ 4110. (As amended April 20, 1891.)  
\* \* \* Any corporation may convey its real estate by an agent appointed by resolution of its directors or governing board.

See § 2645, and cross-references.

[Statute providing that every corporation authorized to hold real estate may convey the same by an agent appointed by vote for that purpose,

\* § 3152.

† § 3153.

Acknowledgments: limitation of actions — G. S., §§ 4111, 4292, 4696, 4714.

does not operate to prevent a conveyance by its chief officers. *Morris v. Keil*, 20 Minn. 531.

Where three agents are appointed by a corporation to tender payment and receive a conveyance of certain property in trust for the corporation, any one of the three may make such tender, for the act is merely ministerial. *Sons of Temperance v. Brown*, 11 Minn. 356.]

§ 4111. Whenever the corporators, members, stockholders, trustees or directors of any corporation, by a vote or resolution, appoint an agent to convey the real estate of such corporation, a copy of such vote or resolution, certified by the clerk or secretary of such corporation, may be recorded in the office of the register of deeds of the county in which the real estate to which such vote or resolution relates, is situated. And such vote or resolution when so certified, or a transcript of such record duly certified, may be used in evidence in the same manner and with like effect as a conveyance recorded in such county.

See § 2645, and cross-references.

[Directors can act for the corporation only when assembled in a board meeting, and a deed of land of the corporation, executed by all the directors acting separately, and not as a board, and without authority from the board as such, is void both as a conveyance and as a contract to convey. *Baldwin v. Canfield*, 26 Minn. 43; s. c., 1 N. W. Rep. 261.]

## CHAPTER LVIII.

### Oaths and Acknowledgments.

#### TITLE II. ACKNOWLEDGMENTS.

Sec. 4292. Forms.

§ 4292. The following forms of acknowledgments may be used in the case of conveyances, or other written instruments affecting real estate; and any acknowledgment so taken and certified, shall be sufficient to satisfy all requirements of law relating to the execution or recording of such instruments:

(Begin in all cases by a caption specifying the State and place where the acknowledgment is taken.)

\* \* \* \* \*

3. In the case of incorporations or joint-stock associations:

On this ..... day of ....., 18... before me appeared A. B., to me personally known, who, being by me duly sworn (or affirmed), did say that he is the president (or other officer or agent of the corporation or association) of (describing the corporation or association), and that the seal affixed to said instrument is the corporate seal of said corporation (or association), and that said instrument was signed and sealed in behalf of said corporation (or association) by authority of its board of directors (or trustees), and said A. B. acknowledged said instrument to be the free act and deed of said corporation (or association).

(In case the corporation or association has no corporate seal, omit the words "the seal affixed to said instrument is the corporate seal of said corporation [or association] and that," and add, at the end of the affidavit clause, the words, "and that said corporation [or association] has no corporate seal.")

(In all cases add signature and title of the officer taking the acknowledgment.)

Any acknowledgment by or on behalf of a corporation made substantially in the form herein prescribed shall be prima facie evidence of the facts therein recited, and that such conveyance or instrument was executed by authority of its board of directors or trustees, and that such corporation was competent and authorized to make such conveyance.

See Acts 17 and 19, at pp. 47, 48.

[Where the common seal of a corporation is affixed to an instrument, and the signatures of the proper officers are proved, the court will presume that the seal was affixed by proper authority. *Morris v. Keil*, 20 Minn. 531; *Meighen v. Strong*, 6 id. 177, distinguished, id.]

The deed of a corporation having been signed by its president and attested by its secretary, who attached the corporate seal, the latter is the proper person to make the affidavit required by above section, to prove that the seal was the corporate seal, and that it was affixed by authority of the board of directors. *Bowers v. Hechtman*, 45 Minn. 238; s. c., 47 N. W. Rep. 792.

The acknowledgment of a corporate deed can only be made by some officer or representative having authority to execute it, and from the certificate it must appear that the person making the acknowledgment was so authorized. *Bennett v. Knowles*, 68 N. W. Rep. 111.]

## CHAPTER LXVI.

### Civil Actions.

- |      |                                       |
|------|---------------------------------------|
| Tit. | 2. Time of commencing.                |
|      | 3. Place of trial.                    |
|      | 6. Summons: appearance; jurisdiction. |
|      | 7. Pleadings.                         |
|      | 16. Garnishment.                      |
|      | 18. Receivers.                        |

#### TITLE II. TIME OF COMMENCING.

Sec. 4696. Limitation of action.

§ 4696. \* \* \* All the provisions of this title as to the time of the commencement of civil actions shall apply to municipal and all other corporations, with like power and effect as the same applies to natural persons.

See § 2667, subd. 1, and cross-references.

#### TITLE III. PLACE OF TRIAL.

Sec. 4714. When corporation is a party.

§ 4714. In all other cases,\* except when the State of Minnesota is plaintiff, the ac-

\*Except those relating to real property, attachments or enforcement of penalties and forfeitures.



## Summons, services of — G. S., §§ 4746, 4748, 4749.

tion shall be tried in the county in which the defendants, or any of them, shall reside at the commencement of the action; or if none of the parties shall reside or be found in the State, or the defendant be a foreign corporation, the same may be tried in any county which the plaintiff shall designate in his complaint, subject, however, to the power of the court to change the place of trial, in the cases provided by law. If the county designated for that purpose in the complaint be not the proper county, the action may, notwithstanding, be tried therein, unless the defendant, before the time for answering expires, demand in writing that the trial be had in the proper county, and the place of trial shall be thereupon changed to the proper county, by the order of the court, unless the parties consent thereto. Provided, That in an action for the claim and delivery of personal property wrongfully taken, the action may be brought and maintained in the county where the wrongful taking occurred, or where the plaintiff resides. A corporation shall be deemed to reside in any county where it has an office, agent, or place of business, within the meaning of this section. The court may change the place of trial of actions included in this section, as provided by law, as in other actions. Provided, That where defendants reside in different counties and appear and answer by different attorneys, the action shall, on motion, be transferred to the county agreed on by such defendants, or which is designated by the largest number of defendants who join in an answer.

Foreign corporations may sue and be sued as domestic. § 3159; see, also, § 2667, and cross-references.

[Section construed. *Olson v. Osborne*, 30 Minn. 444; s. c., 15 N. W. Rep. 876.]

TITLE VI. SUMMONS. APPEARANCE.  
JUR SDICTION.

- Sec. 4746. Summons, how served on corporations.  
4748. On railroad companies.  
4749. On domestic corporations without resident officers.  
4750. On foreign corporations.  
4752. On non-residents in actions respecting realty.  
4753. Service by publication.

§ 4746. The summons shall be served by delivering a copy thereof, as follows:

First. If the action is against a corporation, to the president, or other head of the corporation, secretary, cashier, treasurer, a director or managing agent thereof: Provided, That in case none of the officers named can be found within the State, of which the return of the sheriff that they cannot be found within his county shall be prima facie evidence, then the summons may

be served by publication; but such service can be made in respect to a foreign corporation only when it has property within this State, or the cause of action arose therein;  
\* \* \* \* \*

[The above section does not apply to foreign corporations. *Sullivan v. Packet Co.*, 10 Minn. 386.

There is no reason why a service of writ of mandamus should not be made to the head officer or the select person of the joint-stock association whose duty it is to secure performance of the act required. *State v. Adams Express Co.*, 68 N. W. Rep. 1085.

Service made on the general agent of a foreign joint-stock association, where there is no superior officer in the State, and all the officers and all the shareholders are non-residents, held sufficient. *Id.*

Evidence held to justify denial of a motion to set aside service of summons on the ground that the person served was neither an agent nor an officer of defendant corporation. *Hess v. Mfg. Co.*, 68 N. W. Rep. 774.]

§ 4748. The service of all process and papers in any civil action or proceeding, before any justice of the peace, or in the district court, against any railroad company within this State, may be made upon any acting ticket agent or freight agent of such company; within the county in which the action or proceeding shall be commenced, and shall be taken and held in all cases to be a legal service; Provided, That whenever any railroad company has appeared in an action by an attorney, thereafter such service shall be made upon the attorney of record.

§ 4749. Whenever any corporation created by the laws of this State, or late territory of Minnesota, does not have an officer in this State upon whom legal service of process can be made, of which the return of the sheriff shall be conclusive evidence, an action or proceeding against such corporation may be commenced in any county where the cause of action or proceeding may arise or said corporation may have property; and service may be made upon such corporation by depositing a copy of the summons, writ or other process, or citations in any proceeding for the collection of unpaid personal property taxes, in the office of the secretary of State, which shall be taken, deemed and treated as personal service of such corporation: Provided, That whenever any process, writ, or citation against or affecting any corporation aforesaid is served on the secretary of State, the same shall be by duplicate copies, one of which shall be filed in the office of said secretary of State, and the other by him immediately mailed, postage prepaid, to the office of the company, or to the president, secretary or any director or officer of said corporation, as may appear or be ascertained by said secretary from the articles of incorporation on file in his office.

[Affidavit of secretary of State held to show a proper service on a domestic corporation. *Town of Hinckley v. Kettle River R. Co.*, 72 N. W. Rep. 835.]

§ 4750. (As amended April 1, 1891.) The summons or any process in any civil action or proceeding wherein a foreign corporation or association is defendant, which has property within this State, or the cause of action arose therein, may be served by delivering a copy of such summons or process to the president, or secretary or any other officer, or to any agent of such corporation or association; and such service shall be of the same force, effect and validity as like service upon domestic corporations; Provided, If any such corporation or association has, by an appointment in writing filed with the secretary of this State, appointed or designated some person or resident of this State upon whom summons or process can be served, such summons or process shall be served upon such person so designated; And provided further, That any such action or proceeding may be commenced and tried in any county in which the cause of action arose, subject to be removed for cause as in other cases. This act shall have full force and effect, notwithstanding any provisions of the general statutes or other law of the State inconsistent herewith.

[Where a foreign corporation has no agency within the State, service of summons upon its general agent, who happens to be temporarily in the State, is sufficient, under above section. *Guernsey v. Ins. Co.*, 13 Minn. 278.]

§ 4752. Any person or persons, copartnership or corporation, not resident of this State, owning or claiming any interest in or lien upon any lands lying within this State, may file in the office of the secretary of State of the State of Minnesota, a written agreement, duly executed and acknowledged in the manner provided by law for the execution and acknowledgment of deeds, thereby stipulating and agreeing upon the part of the party or parties executing the same, that service of process and summons in any action or proceeding concerning such real estate, or any interest therein or lien thereon, hereafter commenced in any of the courts of this State, in which such owner or claimant shall be made a party, may be made upon such agent or agents as shall be designated in such agreement, who shall be resident of this State, and authorizing such agent or agents for such party or parties to admit such service of process or summons upon him or them, and agreeing that the service of process or summons upon such agent or agents shall be valid and binding upon such party or parties. Such agreement shall designate such agent or agents, and the place of residence of such agent or agents, and shall be recorded in the office of the secretary of State, in a book to be provided for that purpose, and he shall be entitled to demand, and receive, for the filing and recording thereof, and of any revocation thereof, a fee of fifteen cents for each folio of one hundred

words contained therein. Service of process or summons, or of any writ or notice in such action, shall be made upon the person or persons so designated as such agent or agents, in the manner provided by law for the service of process upon persons residing in the State, and shall be held and deemed a valid and effectual service thereof upon such owner or claimant in like manner, and shall have the same effect in all respects as if served personally upon such owner or claimant within this State; but where such party in the action appears by his attorney therein, the service of papers shall be upon the attorney instead of the party, as by law provided. The original record of such agreement, or a duly certified copy of such record thereof, shall be deemed and taken to be sufficient evidence thereof; and no service by publication of summons in such action shall be made upon any person or persons, copartnership or corporation, non-resident of this State, who shall have made and had recorded such agreement in accordance with the provisions hereof, while the same shall remain in force and unrevoked. Provided, That no agreement made under the provisions of this act shall in anywise affect any action or proceeding commenced prior to the taking thereof. And provided further, That such owner or claimant may at any time revoke or amend any such agreement made by him or them; but such revocation shall in no wise affect any action or proceeding which shall have been commenced prior to the recording of such revocation, which shall be executed, acknowledged and recorded in like manner as hereinbefore provided in respect to the original agreement. Provided further, That this act, or anything therein contained, shall not apply to nor in anywise affect any action or proceeding for the collection of any tax, general or special.

§ 4753. When the defendant cannot be found within the State of which the return of the sheriff of the county in which the action is brought, that the defendant cannot be found in the county, is prima facie evidence, and upon the filing of an affidavit of the plaintiff, his agent or attorney, with the clerk of the court, stating that he believes that the defendant is not a resident of the State, or cannot be found therein, and that he has deposited a copy of the summons in the post-office, directed to the defendant at his place of residence — unless it is stated in the affidavit that such residence is not known to the affiant — and stating the existence of one of the cases hereinafter specified, the service may be made by publication of the summons by the plaintiff or his attorney in either of the following cases:

First. When the defendant is a foreign corporation, and has property within this State.

\* \* \* \* \*

[Statement in affidavit "that defendant is a corporation or company, established and doing business under and by virtue of the laws of the State



## Allegation and proof of incorporation — G. S., §§ 4796, 4797, 4799.

of Illinois," sufficiently 'shows his corporate character. \* *Broome v. Packett Co.*, 9 Minn. 239.

An affidavit for publication of summons which shows defendant to be a foreign corporation sufficiently shows that it cannot be found within the State. *Id.*]

## TITLE VII. PLEADINGS.

Sec. 4796. Allegation of corporate existence.

4797. Proof of same.

4799. Denial of incorporation.

§ 4796. In actions by or against corporations, domestic or foreign, it shall in any pleading be a sufficient allegation that the plaintiff or defendant is a corporation, to aver substantially that the plaintiff or defendant, as the case may be, is a corporation duly organized and created under the laws of the State, territory or government by which it may have been incorporated.

See § 2667, subd. 1, and cross-references.

[An averment in an indictment for the larceny of warehouse receipts issued by a railroad company, which alleges that the company was "a corporation in the State of Minnesota, duly established and organized under and by virtue of the laws thereof," is a sufficient averment of corporate existence, without alleging whether it was incorporated under a private statute or the general laws. *State v. Loomis*, 27 Minn. 521; s. c., 8 N. W. Rep. 758.

Where a corporation is declared such by the act incorporating it, it is not necessary to allege in pleading that the charter has been accepted. *Sons of Temperance v. Brown*, 9 Minn. 157.

An allegation as to corporate existence of a defendant being stated in the complaint before the causes of action, it is unnecessary to repeat such allegation for each cause of action. *West v. Eureka Imp. Co.*, 40 Minn. 394; s. c., 42 N. W. Rep. 87.

Recognition and admission of corporate existence by contracting and dealing with an alleged corporation, as such, are prima facie evidence of its incorporation, in an action by it against the party so dealing with it, brought on contracts made on the faith of such transaction. *Mfg. Co. v. Donohue*, 29 Minn. 111; s. c., 12 N. W. Rep. 354.

An allegation in a pleading that a party is a corporation "constituted and organized under the laws of the State of Minnesota" is a sufficient allegation of corporate existence under above section. *Dodge v. Roofing Co.*, 14 Minn. 49.

One becoming a stockholder in a de facto corporation held estopped to question its existence. *Hause v. Mannheim*, 69 N. W. Rep. 810.

Corporate existence need not be alleged where it does not constitute a part of the cause of action. *Holden v. Elevator Co.*, 72 N. W. Rep. 805.

**Pleadings Generally.**—Where a complaint on a promissory note given by a corporation refers to a charter which shows a corporation competent to make notes, it is not necessary to allege the facts showing for what such note was given. *Gebhard v. Eastman*, 7 Minn. 56.

An admission of the making of a contract by defendant is also an admission of its capacity to make the contract, and a verdict for plaintiff should not be set aside because complaint did not allege that defendant was a corporation. *Monson v. Ry. Co.*, 34 Minn. 269; s. c., 25 N. W. Rep. 595.

The admission of the execution of a contract by a corporation includes an admission of the power to make it, and of the authority of the officer or agent who executed it in its behalf. *Bausman v. Credit Guarantee Co.*, 47 Minn. 377; s. c., 50 N. W. Rep. 496.

A complaint by a corporation for the enforcement of a contract made by it with the defendant

need not allege that plaintiff was empowered to make the contract. *Mill Co. v. Bennewitz*, 28 Minn. 62; s. c., 9 N. W. Rep. 80; *Land Co. v. Dayton*, 37 Minn. 364; s. c., 34 N. W. Rep. 335.

A complaint upon a contract made by a corporation with the defendant, setting forth the contract in terms, which appears to have been made in its behalf by its president, sufficiently shows that the president was authorized to make the contract. *Id.*

In an action ex delicto against a corporation it is not necessary to allege that the acts complained of were committed by agents of the corporation, but it may be averred that they were committed by the corporation itself. *Gould v. Eagle Creek School District*, 7 Minn. 203.

In an action by individual stockholders for fraudulent issue of bonds, which act is prejudicial to the interests of the corporation, complaint must show that it was impracticable for plaintiffs to move the corporation itself to bring the action. *Hodgson v. D., H. & D. R. Co.*, 46 Minn. 454; s. c., 49 N. W. Rep. 197.]

§ 4797. In all actions brought by or against a corporation, it shall not be necessary to prove on the trial of the cause the existence of such corporation, unless the defendant shall in his answer expressly aver that the plaintiff or defendant is not a corporation.

See §§ 2667, subd. 1, 4799, 5117.

[A continued exercise of corporate franchises by persons claiming to be directors and officers of a corporation, without objection, is evidence of the continued existence of such corporation, and that such persons were directors and officers. *Ins. Co. v. Allis*, 24 Minn. 75.

An admission that a corporation is legally organized raises the presumption that it has acted within its corporate powers; and the question whether its acts are ultra vires can be raised only by the State, and not by a private person not a stockholder. *Baker v. Guaranty Loan Co.*, 36 Minn. 185; s. c., 30 N. W. Rep. 464.

In an action by a corporation to enforce a contract, an allegation of the answer denying plaintiff's corporate character is immaterial. *Land Co. v. Dayton*, 39 Minn. 315; s. c., 40 N. W. Rep. 66. A denial in the answer of knowledge or information sufficient to form a belief as to whether plaintiff is a corporation will not impose on plaintiff the necessity of proving its corporate existence, under above section. *Bank v. Loybed*, 28 Minn. 396; s. c., 10 N. W. Rep. 421.

A written contract by defendant with plaintiff by its corporate name, held prima facie proof against defendant of the existence of the corporation. *Continental Ins. Co. v. Richardson*, 72 N. W. Rep. 458.

Oral testimony held admissible to establish existence of a corporation de facto. *Johnson v. Schullin*, 73 N. W. Rep. 147.

A corporation de facto exists where there is a law authorizing its creation, an attempt to organize and use, *Id.*

Members of an association can testify that they always claimed to plaintiff that it was a corporation. *Id.*]

§ 4799. In all actions herein named, an averment in the answer upon information and belief, shall not be construed as an express averment that the plaintiff or defendant is not a corporation, \* \* \*

See § 5117.

[In an action on a written instrument wherein defendant has contracted with plaintiff, designated therein by a corporate name, it is itself sufficient prima facie proof against defendant, in



Garnishments, actions to vacate charter, etc.—G. S., §§ 5002, 5044, 5090, 5117, 5331, 5332.

the nature of an admission of the right of the person represented by that name to enforce the contract by action. *Harvester Co. v. Clark*, 30 Minn. 288; s. c., 15 N. W. Rep. 252.]

## TITLE XVI. GARNISHMENT.

Sec. 5002. Property in hands of corporation.

§ 5002. Corporations may be summoned as garnishees, and may appear by their cashier, treasurer, secretary, or such officer as they may appoint, and the disclosure of such person or officer shall be considered the disclosure of the corporation: Provided, That if it appears to the court that some other member or officer of the corporation is better acquainted with the subject-matter than the one making the disclosure, the court may cite in such person to make answer in the premises; and in case such person neglects or refuses to attend, judgment may be entered as hereinafter provided upon default; and service of the summons upon the agent of any corporation not located in this State, but doing business therein through such agent, shall be a valid service upon said corporation.

See § 2067, subd. 1, and cross-references.

## TITLE XVIII. RECEIVERS.

Sec. 5044. Receiver appointed, when.

§ 5044. A receiver may be appointed:

\* \* \* \* \*

Fourth. In the cases provided by law, when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights; and, in like cases, of the property, within this State, of foreign corporations.

See § 3125, and cross-references.

## CHAPTER LXIX.

### Witnesses and Evidence.

#### TITLE I. COMPETENCY OF WITNESSES AND EVIDENCE.

Sec. 5090. Corporation a party, officers may be examined.

5117. Existence of corporation, how proved in action on promissory notes.

§ 5090. (As amended March 2, 1893.) A party to the record of any civil action or proceeding, or a person for whose immediate benefit such action or proceeding is prosecuted or defended, or the directors, or officers, superintendent or managing agents of any corporation which is a party to the record in such action or proceeding, may be examined upon the trial thereof as if under cross-examination at the instance of the adverse party or parties or any of them, and

for that purpose may be compelled in the same manner and subject to the same rules for examination as any other witness to testify, but the party calling for such examination shall not be concluded thereby, but may rebut it by counter testimony.

See § 2067, subd. 1, and cross-references.

§ 5117. In all actions brought by any corporation, \* \* \* or by the indorsers of any such corporation \* \* \* upon any promissory note, bill of exchange, or other written instrument for the payment of money only, executed and delivered by the defendant to such corporation by its corporate name, \* \* \* the production in evidence of the instrument upon which such action is brought shall be prima facie evidence of the existence of such corporation, \* \* \*

## CHAPTER LXXV.

### Actions to Vacate Charters, and to Prevent the Usurpation of an Office or Franchise.

#### Jurisdiction.

Sec. 5331. To annul incorporations obtained by fraud.

5332. To vacate charter.

5333. Usurping or forfeiting offices or franchises.

5335. One action when several claims the franchises.

5336. Complainant joins as party.

#### Judgment.

Sec. 5339. Of exclusion from office or franchise.

5340. Dissolution of corporations.

5341. Injunction; receiver.

5342. Costs.

5343. Judgment-roll.

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#### Jurisdiction.

§ 5331. An action may be brought by the attorney-general, in the name of the State, whenever the legislature so directs, against a corporation, for the purpose of vacating or annulling the act of incorporation, or an act renewing its corporate existence, on the ground that such act or renewal was procured upon some fraudulent suggestion, or concealment of a material fact, by the persons incorporated, or some of them, or with their knowledge and consent.

[It is an implied condition in the charter of every private corporation, that the State may resume its franchises for misuser or non-user. *State v. Ry. Co.*, 36 Minn. 246; s. c., 20 N. W. Rep. 512.]

§ 5332. An action may be brought by the attorney-general, in the name of the State, for the purpose of vacating the charter, or annulling the existence, of a corporation,

Actions to vacate charters, etc.—G. S., §§ 5333, 5335, 5336, 5339–5343.

other than municipal, whenever such corporation:

First. Offends against any of the provisions of the act or acts creating, altering or renewing such corporation; or.

Second. Violates the provisions of any law by which such corporation forfeits its charter by abuse of its powers; or.

Third. Whenever it has forfeited its privileges or franchises, by failure to exercise its powers; or.

Fourth. Whenever it has done or omitted any act which amounts to a surrender of its corporate rights, privileges, and franchises; or.

Fifth. Whenever it exercises a franchise or privilege not conferred upon it by law.

And the attorney-general shall bring the action in every case of public interest, whenever he has reason to believe that any of these acts or omissions can be proved; and also in every other case in which satisfactory security is given to indemnify the State against the costs and expenses to be incurred thereby.

[To warrant a forfeiture of corporate franchises for misuser, the misuser must be such as to threaten a substantial injury to the public. *State v. Mfg. Co.*, 40 Minn. 213; s. c., 41 N. W. Rep. 1020.

Quo warranto is a proper proceeding to try the right of a foreign corporation to carry on its corporate business in this State. *State v. Ins. Co.*, 39 Minn. 538; s. c., 41 N. W. Rep. 108.

Proceedings by information in the nature of quo warranto will lie directly against a de facto or pretended corporation for usurpation of corporate franchises, or to oust from the enjoyment of the privileges thereof. *State v. Tracy*, 51 N. W. Rep. 613.]

§ 5333. An action may be brought by the attorney-general, in the name of the State, upon his own information, or upon the complaint of a private party, against the party offending in the following cases:

First. When any person usurps, intrudes into, or unlawfully holds or exercises any public office, or any franchise, within this State, or any office in a corporation created by the authority of this State; or.

\* \* \* \* \*

Third. When any association or number of persons act within this State as a corporation, without being duly incorporated. And the attorney-general shall bring the action whenever he has reason to believe that any of these acts can be proved.

§ 5335. When several persons claim to be entitled to the same office or franchise, one action may be brought against all such persons, in order to try their respective rights to such office or franchise.

§ 5336. When an action is brought by the attorney-general, by virtue of this chapter, on the complaint or information of any person having an interest in the question, the name of such person shall be joined with the State as plaintiff.

### Judgment.

§ 5339. When a person or a corporation is adjudged guilty of usurping or intruding into, or unlawfully holding or exercising, any office, franchise or privilege, judgment shall be rendered that such person or corporation be excluded from the office, franchise or privilege. The court may also, in its discretion, impose upon the defendant a fine not exceeding one thousand dollars.

[A judgment restraining a corporation from exercising corporate privileges, and for dissolution, held sustained by the findings. *State v. Mfg. Assn.*, 69 N. W. Rep. 621.]

§ 5340. If it is adjudged that a corporation has, by neglect, abuse or surrender, forfeited its corporate rights, privileges and franchises, judgment shall be rendered that the corporation be excluded from such corporate rights, privileges and franchises, and that the corporation be dissolved.

### Voluntary dissolution. § 3142.

[A corporation is not dissolved by misuser or non-user of its franchises until its default is judicially ascertained and declared. *Ry. Co. v. Melvin*, 21 Minn. 330.]

§ 5341. When such judgment is rendered against a corporation, the court has power to restrain the corporation to appoint a receiver of its property, and take an account, and make distribution thereof among the creditors; and the attorney-general, immediately after the rendition of such judgment, shall institute proceedings for that purpose.

See § 3138, and cross-references.

§ 5342. If judgment is rendered in such action against a corporation, or against persons claiming to be a corporation, the court may cause the costs therein to be collected by execution against the persons claiming to be a corporation, or by process against the directors or other officers of such corporation.

§ 5343. Upon the rendition of such judgment against a corporation, \* \* \* the attorney-general shall cause a copy of the judgment-roll to be forthwith filed in the office of the secretary of State.

## CHAPTER LXXXIII.

### Actions Respecting Corporations.

#### *Jurisdiction.*

Sec. 5554. All corporations and associations included.

5555. Foreign corporation.

5556. Limitation on foreign corporations.

5557. Powers of district courts.

5558. Same.

5559. Same; Injunction.

5560. Same.

5561. Forfeiture and dissolution.



*Proceedings.*

- Sec. 5562. How commenced.  
 5563. By creditor.  
 5564. Notice to creditors.  
 5565. Account; receiver.  
 5566. When corporations proved insolvent.  
 5567. Distribution of corporate assets.  
 5568. Same.  
 5569. Same; stock subscriptions.  
 5570. Same; against officer and stockholders.  
 5571. Supplemental complaint by creditor.  
 5572. Sequestration; receiver.

*Jurisdiction.*

§ 5554. This chapter embraces all corporations, including in such designation all associations having any corporate rights, whether created by special acts or under general laws.

§ 5555. A foreign corporation may prosecute in the courts of this State, in the same manner as corporations created under the laws thereof.

§ 5556. A foreign corporation cannot maintain an action in this State upon an obligation or liability arising out of, or in consideration of, an act which is contrary to the law or policy of the State, or which is thereby forbidden in respect to corporations or associations therein whose general business is similar to that of such foreign corporation.

§ 5557. The district court may compel the officers of any corporation —

First. To account for their official conduct in the management and disposition of the funds and property committed to their charge;

Second. May decree and compel payment by them, to the corporation which they represent, and to its creditors, of all sums of money, and of the value of all property, which they have acquired to themselves, or transferred to others, or have lost or wasted by any violation of their duties as such officers;

Third. May suspend any such trustee or other officer from exercising his office, whenever it appears that he has abused his trust;

Fourth. May remove any trustee or officer from his office, upon proof or conviction of gross misconduct;

Fifth. (As amended April 18, 1893.) May direct, if necessary, a new election to be held, by the body or board duly authorized for that purpose, to supply any vacancy created by such removal; Provided, That in case of the removal of a director or directors, or trustee or trustees, or other officer, the election shall be conducted under and pursuant to the order, direction and control of the court by a disinterested person appointed by the court; And, provided further, That in case of the removal of a majority of the directors or trustees, the court may appoint a person who shall act as temporary receiver of the corporation until a new election shall be held and the newly

elected directors or trustees shall have qualified. Said receiver shall give a bond in such amount as the court may require and shall continue the business of the corporation under and pursuant to the order, direction and control of the court. An appeal from an order or judgment removing an officer or trustee shall not operate to stay the effect thereof or proceedings thereunder, but the term of office of any officer, director or trustees so elected to fill any vacancy, or of any receiver so appointed by the court, shall be terminated by a reversal or vacation of said order or judgment by the supreme court.

Sixth. May set aside all alienations of property made by the trustees or other officers of any corporation, contrary to the provisions of law, or for purposes foreign to the lawful business and objects of such corporation, in cases where the person receiving such alienation knew the purpose for which the same was made; and

Seventh. May restrain and prevent any such alienation, in cases where it is threatened, or there is good reason to apprehend that it is intended.

[Right of corporate creditor, suffering loss peculiar to himself through an officer's neglect of duty, to maintain an action at law against the latter. *Bank v. Harper*, 63 N. W. Rep. 1079; *Bank v. Loan Co.*, *id.*

When the managers and majority of the stockholders divert the company and its property from their legitimate purposes, for the benefit of one of such majority, a minority stockholder may bring suit without applying to have suit brought in the name of the corporation. *Rothwell v. Robinson*, 39 Minn. 1; *s. c.*, 38 N. W. Rep. 772.

In an action by one stockholder against the rest for an accounting and appointment of receiver, petition denied on the facts proven. *Rothwell v. Robinson*, 44 Minn. 538; *s. c.*, 47 N. W. Rep. 255.

An action to recover a corporate debt from corporate officers on the ground of fraud, held not an action for a penalty which is triable in the county where the cause of action accrued. *Flowers v. Bartlett*, 68 N. W. Rep. 976.]

§ 5558. Whenever any visitatorial powers over any corporation are vested by statute in any corporate body or public officer, the provisions of the preceding section shall not be construed to impair the powers so vested.

§ 5559. Upon a complaint filed under the direction of the attorney-general in any district court, such court has power to restrain, by injunction, any corporation from assuming or exercising any franchise, liberty or privilege, or transacting any business not authorized by the act by or under which such corporation was created, and to restrain any individuals from exercising any corporate rights, privileges or franchises not granted to them by law.

§ 5560. Such injunction may be issued before the coming in of the answer, upon satisfactory proof that the defendant complained of has usurped, exercised or claimed any franchise, privilege, liberty, or corporate right not granted to it.



## Actions respecting corporations — G. S., §§ 5561-5565.

§ 5561. Whenever any railroad company doing business in this State shall charge, demand or receive unreasonable rates for the transportation of freight or passengers over any portion of its line of railroad, or violate any of the provisions of its act or acts of incorporation, or any other law binding upon such corporation, or if any incorporated company remain insolvent for one year, or for one year neglects or refuses to discharge its notes or other evidence of debt, or for one year suspends the lawful business of such corporation, such company or corporation shall be deemed to have forfeited the rights, privileges and franchises granted by any act or acts of incorporation, or acquired under the laws of this State, and shall be adjudged to be dissolved; and it is hereby made the duty of the attorney-general to make complaint in the district court in any county in which such company or corporation may be doing business, against any company or corporation who shall in any manner violate any of the provisions of this section, or commit any of the acts herein recited; and upon the trial in said court, or any court to which the same may be transferred, if it shall be established, by the finding of the court, or the verdict of the jury, that any of the acts herein recited have been committed by such corporation or company, the said court shall render judgment of forfeiture and the dissolution of such corporation, and may appoint receivers as in other cases provided for in this act. Upon the trial of any action commenced against any railroad company or corporation for charging, demanding or receiving unreasonable rates for the transportation of freights or passengers, under the provisions of this section, the court or jury before whom the same is tried shall find specially whether such company or corporation has charged, demanded or received unreasonable rates for such transportation.

## Proceedings.

§ 5562. Actions may be commenced against corporations, whether created under the laws of this State, or any other State or country, except as otherwise expressly provided, in the same manner as other civil actions; and where service of summons is made according to the statute, the plaintiff may proceed thereupon in the same manner as in civil actions against natural persons.

[A stockholder who assents to an ultra vires contract cannot afterward sue to annul it. *Stewart v. Transportation Co.*, 17 Minn. 372.]

A court of equity will not entertain an action by a stockholder to prevent the carrying out of a contract made by the corporation, when the latter itself refuses to act upon, and repudiate the same. *Id.*

If a plaintiff bringing an equitable action as stockholder, to protect his stock, is a legal stockholder it is immaterial whether or not he became such upon a bona fide subscription to the stock of the company. *Id.*

Plaintiff brought an action for lands against a corporation of which he claimed to be president, and have summons served upon himself as such president, and upon another person as secretary. Held, that certain stockholders should have been served with summons and permitted to answer. *Morrill v. Mfg. Co.*, 46 Minn. 260; s. c., 48 N. W. Rep. 1124.]

§ 5563. Whenever any creditor of a corporation seeks to charge the directors, trustees, or other superintending officers of such corporation, or the stockholders thereof, on account of any liability created by law, he may file his complaint for that purpose, in any district court which possesses jurisdiction to enforce such liability.

[Right of a creditor under G. S. 1878, ch. 76 (G. S. 1894, ch. 76), to require stockholders to be made parties and have their liabilities ascertained and enforced for the benefit of all creditors, though the creditor who instituted the original action did not ask for such relief. *Bank v. Real Estate Co.*, 63 N. W. Rep. 1068.]

In a proceeding against an insolvent corporation under this chapter to wind up its affairs and distribute its assets among creditors, a creditor may be allowed by the court, in its discretion, to come in and become a party after expiration of the time previously limited for such purpose. *Spooner v. Bay St. Louis Syndicate*, 51 N. W. Rep. 377.

Judgment by default may be taken against a stockholder. *Id.*

In an action commenced under this chapter, to have a corporation adjudged insolvent, a creditor who has become a party, and proved his claim, may appeal from an order directing a sale of the property of the insolvent, and also from an order confirming such sale. But on an appeal from the latter only the regularity of the sale and the adequacy of the price obtained can be considered. *Hospes v. Mfg. & Car Co.*, 41 Minn. 256; s. c., 43 N. W. Rep. 180.

In an action by creditors of an insolvent corporation, under above section, against the corporation and certain stockholders therein, from whom amounts are due on shares of stock, a finding that such persons were "stockholders" includes a finding that every condition precedent to their becoming full stockholders, and subject to liability, has been performed or waived. *Arthur v. Clarke*, 46 Minn. 491; s. c., 49 N. W. Rep. 252; *Masonic Temple Assn. v. Channell*, 43 Minn. 353; s. c., 45 N. W. Rep. 716, distinguished, *id.*]

§ 5564. Whenever any action is brought against any corporation, its directors or other superintending officers, or stockholders, according to the provisions of this chapter, the court, whenever it appears necessary or proper, may order notice to be published, in such manner as it shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the action, within a reasonable time, not less than six months from the first publication of such order, and, in default thereof, to be precluded from all benefit of the judgment which shall be rendered in such action, and from any distribution which shall be made under such judgment.

§ 5565. The court shall proceed thereon as in other cases, and, when necessary, shall cause an account to be taken of the property

## Actions respecting corporations — G. S., §§ 5566-5572.

and debts due to and from such corporation, and shall appoint one or more receivers.

District court may appoint receiver, when. § 3138.

[A receiver of a corporation, appointed under this section, may avoid a prior chattel mortgage of the corporation on the ground that it was not filed as required by law. *F. L. & T. Co. v. Engine & Mach. Works*, 35 Minn. 543; s. c., 29 N. W. Rep. 349.]

§ 5566. If, on the coming in of the answer, or upon the taking of any such account, it appears that such corporation is insolvent, and that it has no property or effects to satisfy such creditors, the court may proceed, without appointing any receiver, to ascertain the respective liabilities of such directors and stockholders, and enforce the same by its judgment as in other cases.

[If a creditor of an insolvent corporation appear and take part in proceedings against it, he will, in a collateral proceeding, be bound by the judgment rendered in this proceeding. *Nelson v. Jenks*, 51 Minn. 108; s. c., 52 N. W. Rep. 1081.

The insolvency of a corporation at a particular time is not shown by proof that several weeks after that time it made a general assignment for the benefit of creditors. *Redding v. Godwin*, 44 Minn. 355; s. c., 46 N. W. Rep. 563.]

§ 5567. Upon a final judgment in any such action to restrain a corporation or against directors or stockholders, the court shall cause a just and fair distribution of the property of such corporation, and of the proceeds thereof, to be made among its creditors.

§ 5568. Upon a final judgment on any such complaint, the court shall cause a just and fair distribution of the property of all such corporations, and of the proceeds thereof, not distributed prior to the passage of this act, to be made in the following manner: After the payment of costs, debts due the United States, the State of Minnesota, all taxes or assignments levied and unpaid, expenses of the receivership and executing the trust, the receiver shall pay in full, if sufficient there remains for that purpose, the claims duly proven of all servants, clerks, or laborers for personal services or wages owing from such corporation, for services performed for the three months preceding the appointment of a receiver of such corporation as provided in section nine (9) and the balance of said estate shall then be distributed among the general creditors of such corporation under the direction of the court.

§ 5569. In all cases in which the directors or other officers of a corporation, or the stockholders thereof, are made parties to an action in which a judgment is rendered, if the property of such corporation is insufficient to discharge its debts, the court shall proceed to compel each stockholder to pay in the amount due and remaining unpaid on

the shares of stock held by him or so much thereof as is necessary to satisfy the debts of the company.

§ 5570. If the debts of the company remain unsatisfied, the court shall proceed to ascertain the respective liabilities of the directors or other officers, and of the stockholders, and to adjudge the amount payable by each, and enforce the judgment as in other cases.

[In a proceeding under above section, against an insolvent corporation and its stockholders, if part only of the subscribers are made parties, the court may charge those brought in with a just proportion only of the corporate debts. *Clarke v. Opera House Co.*, 58 Minn. 16; s. c., 59 N. W. Rep. 632.

The remedy provided in above section is the method of enforcing the individual liability of a stockholder in a manufacturing corporation, and such action must be in the nature of a suit in equity, prosecuted by or in behalf of all creditors, against the corporation, and all the stockholders on whom such liability rests. *Johnson v. Fischer*, 30 Minn. 173; s. c., 14 N. W. Rep. 799.

If, in proceedings under this chapter, to collect assets of an insolvent corporation, and enforce individual liability of stockholders, all stockholders are not joined as parties, the defect is waived if objection is not taken by answer or demurrer; and, if any stockholders joined as parties are not served or brought into court, the defect is waived if the others go to trial on the merits without applying to have the cause stayed until their associates are brought in. *Arthur v. Willius*, 44 Minn. 409; s. c., 46 N. W. Rep. 851.]

§ 5571. If any creditor of a corporation desires to make such directors or stockholders parties to the action, after a judgment therein against the corporation, he may do so, on filing a supplemental complaint against them, founded upon such judgment; and if such decree was rendered in a proceeding instituted by the attorney-general, such creditor may, on his application, be made complainant therein, and may, in like manner, make the directors and stockholders sought to be charged, defendants in such action.

§ 5572. Whenever a judgment is obtained against any corporation incorporated under the laws of this State, and an execution issued thereon is returned unsatisfied in whole or in part, upon the complaint of the person obtaining such judgment, or his representatives, the district court within the proper county may sequester the stock, property, things in action and effects of such corporation, and appoint a receiver of the same.

[An insolvent corporation cannot, by making an assignment under the insolvent laws, defeat a proceeding instituted for the receiver under above section. *State v. Bank*, 55 Minn. 139; s. c., 56 N. W. Rep. 575.

A receiver cannot be appointed for a corporation, other than a bank or insurance company, on the application of a creditor who has not first executed his legal remedies as required by § 5572. *Klee v. Steele Co.*, 62 N. W. Rep. 399.

In an action against a corporation to collect and convert its assets and apportion them among creditors under this chapter, the individual liability of stockholders may be enforced upon the



Fraud by corporate officers — G. S., §§ 6379, 6380, 6445, 6446, 6448.

application of any creditor who is a party to the proceedings, although the complaint of the judgment creditor who instituted them, did not demand any such relief. *Arthur v. Willius*, 44 Minn. 409; s. c., 46 N. W. Rep. 851.

The individual liability of stockholders, imposed by Const., art. X, § 3, may be enforced in a sequestration proceeding against the corporation under this chapter, upon the application of any creditor who has become a party to the proceedings. *Arthur v. Willius*, 44 Minn. 409; s. c., 46 N. W. Rep. 851; *McKusick v. Seymour*, 50 id. 1114.

The equitable right of creditor of an insolvent corporation to compel the holders to pay for "bonus" stock may be enforced in a sequestration proceeding under this chapter, upon the complaint of any interested creditor who has become a party to the proceeding. *Hospes v. Mfg. & Car Co.*, 50 N. W. Rep. 1117.

Where execution against a corporation has been returned unsatisfied, and a receiver has been appointed for all corporate property, a creditor of the corporation who recovers damages against it after the property is thus taken into custody has no right to redeem real estate sold by the receiver under direction of the court. *Watkins v. Mfg. Co.*, 41 Minn. 150; s. c., 42 N. W. Rep. 862.]

## CHAPTER LXXXVI.

### The Penal Code.

Tit. 15. Crimes against property.  
18. General provisions.

#### TITLE XV. CRIMES AGAINST PROPERTY.

- Sec. 6379. Officer of corporation selling forged script or stock.  
6380. Fraudulently indicating person as corporate officer.  
6445. Fraud in subscriptions for stock of corporations.  
6446. Fraudulent issue of stock, scrip, etc.  
6448. Fraud in keeping accounts, etc.  
6449. Officer of corporation publishing false reports of its condition.  
6450. Director defined.

§ 6379. An officer, agent, or other person, employed by any company or corporation existing under the laws of this State, or of any other State or territory of the United States, or of any foreign government, who willfully and with a design to defraud, sells, pledges or issues, or causes to be sold, pledged or issued, or signs or procures to be signed with intent to sell, pledge or issue, or to be sold, pledged or issued, a false, forged or fraudulent paper, writing or instrument, being or purporting to be a scrip, certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such company or corporation or a bond or other evidence of debt of such company or corporation, or a certificate or other evidence of the ownership or of the transfer of any such bond or other evidence of debt, is guilty of forgery in the third degree, and, upon conviction, in addition to the punishment prescribed in this title for that offense, may also be sentenced to pay a fine not exceeding three thousand dollars.

See § 2682, and cross-references.

§ 6380. The false making or forging of an instrument or writing, purporting to have been issued by or in behalf of a corporation or association, State or government, and bearing the pretended signature of any person, therein falsely indicated as an agent or officer of such corporation, is forgery in the same degree, as if that person were in truth such officer or agent of the corporation or association, State or government.

See § 2682, and cross-references.

§ 6445. A person who signs the name of a fictitious person to any subscription for, or agreement to take stock in any corporation, existing or proposed, and a person who signs, to any subscription or agreement, the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or under any understanding, or agreement, that the terms of such subscription, or agreement, are not to be complied with, or enforced, is guilty of a misdemeanor.

§ 6446. An officer, agent, or other person in the service of any joint-stock company, or corporation formed or existing under the laws of this State, or of the United States, or of any State, or territory thereof, or of any foreign government or country, who wilfully and knowingly, with intent to defraud; either

1. Sells, pledges, or issues, or causes to be sold, pledged, or issued, or signs or executes, or causes to be signed or executed with intent to sell, pledge, or issue, or to cause to be sold, pledged, or issued, any certificate or instrument purporting to be a certificate, or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt, or writing purporting to be a bond or evidence of debt of such company or corporation, without being first thereto duly authorized by such company or corporation, or contrary to the charter or laws under which such corporation or company exists, or in excess of the power of such company or corporation, or of the limit proposed by law, or otherwise, upon its power to create or issue stock or evidence of debt; or

2. Reissues, sells, pledges, or disposes of, or causes to be reissued, sold, pledged or disposed of, any surrendered or canceled certificates, or other evidence of the transfer or ownership of any such share or shares,

Is punishable by imprisonment in the State prison for not less than three years nor more than seven years, or by a fine not exceeding three thousand dollars, or by both.

Liability of stockholder who is guilty of fraud.  
§ 2455; see § 2682.

§ 6448. A director, officer, or agent of any corporation or joint-stock association, who



knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof, in the books or accounts of such corporation or association; and a director, officer, agent, or member of any corporation or joint-stock association, who, with intent to defraud, destroys, alters, mutilates, or falsifies, any of the books, papers, writings or securities belonging to such corporation or association, or makes or concurs in making any false entry, or omits or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the State prison not exceeding ten years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

See § 2644, and cross-references.

§ 6449. A director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition, containing any material statement which is false, other than such as are elsewhere, by this code, specially made punishable, is guilty of a misdemeanor.

§ 6450. The term "director," as used in this chapter, embraces any of the persons

having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter, or are known in law.

Election of directors. § 2662.

#### TITLE XVIII. GENERAL PROVISIONS.

Sec. 6535. Construction of terms.

§ 6535. In construing this code, or an indictment or other pleading in a case provided for by this code, the following rules must be observed, except when a contrary intent is plainly declared in the provisions to be construed, or plainly apparent from the context thereof:

\* \* \* \* \*

13. The term "person" includes a corporation or joint association as well as a natural person. \* \* \*

#### CHAPTER XCVIII.

##### Pleas.

Sec. 6784. Plea of guilty by a corporation.

§ 6784. A plea of guilty can in no case be put in, except by the defendant himself, in open court, unless upon an indictment against a corporation, in which case it may be put in by counsel.

See § 2667, and cross-references.

### LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO 1890.

1. To legalize certain defectively organized corporations.
2. To prohibit pools and trusts.
3. To prohibit employers from requiring surrender of rights of citizenship by employees.
4. To enable corporations incorporated by special act, to alter their powers and organizations in certain respects.
5. To define who are entitled to stock certificates, of what they are evidence, and to provide for their renewal when lost or destroyed.
6. To provide for suits against receivers and assignees.
7. To legalize, in certain cases, proceedings for extending the period of corporate existence.
8. To cure certain irregularities in the organization of private corporations under the general laws.
9. To regulate the employment of children.
10. Relative to criminal offenses committed by corporations.
11. To legalize acknowledgments taken by officers of corporations as notaries public.
12. To legalize articles and acts of certain corporations.
13. To authorize the extension of term of corporate existence in certain cases.
14. To provide for the appointment, by foreign corporations, of agents to receive service of summons.
15. To prohibit blacklisting and coercing of employees.
16. To provide a penalty for coercing employees.
17. To legalize certain corporations and validate transfers of property made by them.
18. To compel transfer agents to exhibit transfer-book and list of stockholders.
19. To legalize certain deeds heretofore made by corporations.
20. To provide for enforcement of personal liability by assignees and receivers.

#### Act 1.

AN ACT to legalize certain corporations.

Be it enacted by the legislature of the State of Minnesota:

Section 1. That in any case where there has been heretofore any attempted formation and organization or renewal of any corporation under any of the general laws of this State, and the persons so attempting to form or organize or renew any corporations have actually adopted and signed articles of as-

Pools and trusts; surrender by employers — Acts, April 20, 1891, March 3, 1893.

sociation in which the business specified to be carried on by them as such corporation was such as might be lawfully carried on under said laws, and have, in fact, proceeded as such corporation under the corporate name assumed by them to transact and carry on such business, and in the pursuit thereof have in good faith received and transferred by conveyance to or from such body corporate in such corporate name any property, real or personal, such attempted formation and organization or renewal in each and every such case is hereby legalized and declared a valid and effectual formation and organization or renewal of such corporation under the name assumed, notwithstanding the omission of any other matter or thing by law prescribed to be done or observed in the formation, organization or renewal thereof. And any and all conveyances of property, real or personal, in good faith and lawful form, made to or by any such body under the corporate name so assumed, are hereby legalized and declared as valid and effectual for the purposes intended thereby as if such body corporate had been originally in all things duly and legally incorporated. Provided, That no such corporation nor any of the acts or doings thereof shall be or are hereby validated, unless such so-called corporation shall within ninety [90] days from the passage of this act file in the office of the secretary of State, and also in the register of deeds in the county in which is the principal place of business of said corporation, its articles of incorporation, if the same have not been heretofore so filed, and shall at the time of filing such articles in the office of the secretary of State, pay into the State treasury the fees provided for by chapter two hundred and twenty-five (225) of the general laws of one thousand eight hundred and eighty-nine (1889), if the date of such attempted organization is subsequent to the passage of said law.

§ 2. This act shall take effect and be in force from and after its passage.  
(Approved April 18, 1891.)

See § 3146.

## Act 2.

AN ACT to prohibit pools and trusts in the State of Minnesota.

Be it enacted by the legislature of the State of Minnesota:

Section 1. If any corporation organized under the laws of this State or any other State or country for transacting or conducting any kind of business in this State, or any partnership or individual shall create, enter into, become a member of or a party to any pool, trust, agreement, combination or confederation with any other corporation, partnership or individual to regulate or fix the price of oil, lumber, coal, grain, flour,

provisions or any other commodity or article whatever, or shall create, enter into, become a member or a party to any pool, agreement, combination or confederation to fix or limit the amount or quantity of any commodity or articles to be manufactured, mined, produced or sold in this State, shall be deemed guilty of a conspiracy to defraud, and be subject to indictment and punishment, as provided in the next section.

§ 2. (As amended April 8, 1893.) Any person or corporation found guilty of a violation of this act shall be punished by a fine of not less than one hundred (100) dollars, nor to exceed five thousand (5,000) dollars, and be imprisoned in the State prison for not less than one year nor more than ten years: Provided, however, That this act shall not affect nor shall the same apply to any offense committed before the passage hereof; but any person having violated the provisions of said section previous to the passage of this act shall be prosecuted and punished in the manner and according to the provisions of the statutes in force at the time of the commission of such offense.

§ 3. Upon the trial of an indictment against a corporation or a copartnership for a violation of the first section of this act, all officers and agents of such corporation or copartnership shall be competent witnesses against the defendant on trial, and such officers and agents may be compelled to testify against such defendant and produce all books and papers, in his custody or under his control, pertinent to the issue in such trial, and shall not be excused from answering any such question or from producing any books and papers because the same might tend to criminate such witness; but nothing which such witness shall testify to and no books or papers produced by him shall in any manner be used against him in any suit, civil or criminal, to which he is a party.

§ 4. All acts and parts of acts in conflict with this act be and the same are hereby repealed.

§ 5. This act shall take effect and be in force from and after its passage.

(Approved April 20, 1891.)

See Const., art. IV, § 35.

## Act 3.

AN ACT declaring it a misdemeanor on the part of employers to require as a condition of employment the surrender of any right of citizenship.

Be it enacted by the legislature of the State of Minnesota:

Section 1. Any person or partnership carrying on any trade or business in this State, and any corporation created under general or special laws, foreign or domestic, and exercising public or private franchises therein, are hereby forbidden from requiring or de-

Number of directors; increase or decrease, etc.; stock, etc.— Acts, Mar. 11 and Apr. 8, 1893.

manding of or from any servant or employe, on any condition whatever, the surrender in writing or by parol, or the abandonment or any agreement to abandon any lawful right or privilege of citizenship, public or private, political or social, moral or religious, and whoever violates the provisions of this act shall be deemed guilty of a misdemeanor and upon a conviction shall be fined in a sum not exceeding one hundred dollars and shall stand committed to the common jail of the proper county until such fine and costs of prosecution are paid, or in lieu of such fine the proper court may, in its discretion, sentence the convicted party to imprisonment in the county jail of the proper county for a term not exceeding ninety days.

§ 2. The president, vice-president, secretary, general superintendent, or other principal officer of any such partnership, association or corporation as is named in section one of this act, who may direct or be a party to the violation of the provisions hereof, shall be taken and deemed as persons within the meaning thereof and shall be held liable in all courts and places for a violation by such partnership or corporation of the provisions thereof.

§ 3. The county attorney of any county, or the proper prosecuting officer of any city or municipality in this State, is hereby authorized and directed to commence and to prosecute to termination before the proper court all violations of the provisions of this act, whenever the same are brought to his notice.

§ 4. All acts and parts of acts inconsistent with this act are hereby repealed.

§ 5. This act shall take effect and be in force from and after its passage.

(Approved March 3, 1893.)

See § 2667, subd. 5, and cross-references.

#### Act 4.

AN ACT to enable corporations incorporated by or under special acts of the legislature of Minnesota, to alter their powers and organizations in certain respects.

Be it enacted by the legislature of the State of Minnesota.

Section 1. That the shareholders in any body corporate heretofore chartered, incorporated or organized by or under any special act or acts of the legislature of the State or territory of Minnesota, may by resolution adopted at any regularly called meeting of such shareholders, by a majority vote in number and amount of such shareholders and the shares in said corporation and specifying the exact nature of the change intended, alter the number of the members of the board of directors of said body corporate (whether by increasing or diminishing the same) to any number so designated, not less than three or more than fifteen, or may, in like manner, increase or diminish the amount

of the capital stock in said body corporate or the number of shares of stock therein, or may in like manner establish one hundred dollars as the par value of shares of stock in said body corporate and provide for the conversion of outstanding shares of said body corporate into shares thereof of the par value of one hundred dollars.

§ 2. That any body corporate adopting any such resolution shall cause to be prepared a certificate setting forth such resolution in full and stating the time when the same was adopted, which certificate shall be subscribed and sworn to by the president or other chief executive officer and also by the secretary of such body corporate, and shall be filed, published and recorded in the same manner provided in and by title one of chapter thirty-four of the general statutes of one thousand eight hundred and seventy-eight for the filing, recording and publication of articles of incorporation of corporations organized under the provisions of that chapter and title; and thereupon the change so resolved upon shall become effectual and said resolution shall be of the same force and effect as if the provisions therein contained had been a part of the original act of incorporation of said body politic.

§ 3. This act shall take effect and be in force from and after its passage.

(Approved March 11, 1893.)

#### Act 5.

AN ACT to define who are entitled to stock certificates, of what they are evidence, and to provide for their renewal when worn out, damaged, lost or destroyed.

Be it enacted by the legislature of the State of Minnesota:

Section 1. Any owner or holder of any shares of a corporation which issues certificates to such owners or holders when fees and dues are paid to such corporation shall be entitled to a certificate which shall show the number of shares to which he is entitled, and said certificate shall be prima facie evidence of such ownership.

§ 2. If any such certificate be worn out or damaged then, upon the same being produced to the proper officers of said corporation issuing the same, and a demand being made, and an offer of surrender of such certificate so worn out or damaged, it shall be the duty of said corporation to issue to the party in whom such shares are vested a new and marketable one without requiring any indemnity. When any certificate is lost or destroyed upon proof thereof a new certificate shall be given upon sufficient indemnity being given to such corporation. If the evidence is clear that said certificate has been lost or destroyed and it has not been heard of for a period of seven years, it shall be the duty of said corporation to issue a new certificate without indemnity; and the



Suits against receivers; cure of defects, etc.—Acts, April 11, 18, 19, 1893.

secretary and other proper officers shall make record thereof in his register of shareholders and said corporation shall be relieved from all damages in reference thereto.

§ 3. This act shall take effect and be in force from and after its passage.

(Approved April 8, 1893.)

[Right of stockholder to a new certificate in place of one lost without giving bonds determined. *Guilford v. Western Union Tel. Co.*, 64 N. W. Rep. 1021.]

An action may be maintained by a stockholder against a foreign corporation to compel the issue of a corporate certificate in place of one lost. *Id.*; s. c., 43 Minn. 434; s. c., 46 N. W. Rep. 70.]

#### Act 6.

AN ACT providing for suits against receivers and assignees or managers of property under the control of the courts of this State.

Be it enacted by the legislature of the State of Minnesota:

Section 1. That every receiver, assignee or manager of any property appointed by a court or managing the same under the direction of any court of this State, may be sued in respect to any act or transaction of his in carrying on the business connected with such property or corporation without the previous leave of the court by whom or in which such receiver, assignee or manager was appointed or under which he is acting.

§ 2. Any such suit may be brought in such county or jurisdiction as the same could have been brought against the person or corporation represented by such receiver, assignee or manager before such receiver, assignee or manager had been appointed or taken charge of such property, and such action shall be tried against such receiver, assignee or manager in the same manner and subject to the same rules of procedure as against the person or corporation for whom he acts under the court in case no receiver, assignee or manager had been appointed.

§ 3. Any judgment recovered as aforesaid against such receiver, assignee or manager in any court shall be paid by said receiver as a part of the expenses of managing said property.

§ 4. This act shall take effect and be in force from and after its passage.

(Approved April 11, 1893.)

Appointment of receiver. § 3138. Duties of receiver. § 3140.

#### Act 7.

AN ACT to legalize, in certain cases, proceedings for extending the period of corporate existence.

Be it enacted by the legislature of the State of Minnesota:

Section 1. That in any case where a corporation created by the laws of this State shall,

within the period of its corporate existence as originally defined, have heretofore initiated proceedings authorized by law for the extension of its corporate existence, and said proceedings have been regularly taken and consummated, except that the original period of corporate existence had expired prior to the making of the newspaper publication of the resolution or amendatory articles in that behalf required by law, the said proceedings are hereby legalized, and declared as valid as though such publication had been made before the original corporate term had expired.

§ 2. This act shall take effect and be in force from and after its passage.

(Approved April 19, 1893.)

Duration of corporate existence. § 2640. Corporation may be renewed. § 2653.

#### Act 8.

AN ACT to cure certain irregularities in the organization of private corporations under the general laws of this State.

Be it enacted by the legislature of the State of Minnesota:

Section 1. That every private corporation, heretofore in good faith organized or attempted to be organized under the general laws of this State, but whose articles of incorporation have been irregularly published or for an insufficient length of time, but where the persons organizing the same have acted in good faith, and corporate meetings have been held, and business transacted, and such de facto corporation has acted in all things as though there were no errors or omissions in its organization, the same is hereby declared to be in law a valid and legal corporation de jure, and shall be so deemed and held in all courts, and as to all transactions past and future, and the liabilities of the stockholders and incorporators shall be those of a corporation de jure and the same as though there was no defect in its organization. Provided, This act shall not affect any action at law now pending.

§ 2. This act shall take effect and be in force from and after its passage.

(Approved April 18, 1893.)

See Act of 1891, at p. 40.

#### Act 9.

AN ACT to regulate the employment of children.

Be it enacted by the legislature of the State of Minnesota:

Section 1. (As amended April 23, 1897.) No child under fourteen (14) years of age shall be employed at any time in any factory or workshop, or about any mine. No such child shall be employed in any mercantile estab-

## Employment of children—Act, April 5, 1895.

lishment nor in the service of any telegraph, telephone or public messenger company except during the vacation of the public schools in the town where such child is employed. No child under sixteen (16) years of age shall be employed at any occupation dangerous or injurious to life, limb, health or morals; nor at any labor of any kind outside of the family of such child's residence before six o'clock in the morning, nor after seven o'clock in the evening, nor more than ten (10) hours in any one day, nor more than ten (10) hours in any one week, except in accordance with the following express permission or condition, to wit: Children not less than fourteen years of age may be employed in mercantile establishments on Saturdays and for ten days each year before Christmas until ten (10) o'clock in the evening; Provided, however, That this permission shall not be so construed as to permit such children to toil more than ten hours in any one day, nor over sixty hours in any one week.

§ 2. No child under the age below which all children are by law required to attend shall in the year next succeeding any birthday of said child be employed in any occupation during the hours in which the public schools in the town or city in which he resides are in session, unless or until the said year he has attended some school for at least a period of time equal to that required by law for attendance of school.

§ 3. The commissioner of labor, the factory inspector or any assistant factory inspector shall have power to demand a certificate of physical fitness from some regularly licensed physician in the case of children who may seem physically unable to perform the labor at which they may be employed, and no minor shall be employed who cannot obtain such a certificate.

§ 4. No child under sixteen years of age who cannot read and write simple sentences in the English language shall, except in vacations of the public schools be employed at any indoor occupation, provided such child is not a regular attendant at a day or evening school.

§ 5. (As amended April 23, 1897.) Whenever it appears upon due examination that the labor of any minor who would be debarred from employment under the provisions of sections two and four of this act is necessary for the support of the family to which said minor belongs, or for his own support, the school board or board of school trustees of the city, village or town in which said child resides may, in the exercise of their discretion, issue a permit or excuse authorizing the employment of such minor within the time or times as they may fix.

§ 6. No person, firm or corporation shall employ or permit any child under sixteen (16) years of age to have the care, custody, management or operation of any elevator, or permit any person under eighteen (18) years of age to have the care, custody, manage-

ment or operation of any elevator running at a speed of over two (200) hundred feet a minute.

§ 7. No child actually or apparently under sixteen (16) years of age shall be employed in any factory, workshop or mercantile establishment, or in the service of any public telegraph, telephone or district messenger company or other corporation, unless the person, firm or corporation employing said child procures and keeps on file the certificate required in the case of such child by the following section, and also keep on file a full and complete list of such children employed therein.

§ 8. The employment certificates of children under sixteen (16) years of age called for by this act, shall, in cities and towns having a superintendent of schools, be signed by said superintendent or some person authorized by him in writing so to sign the same; in other cities and towns it shall be signed by some member of the school board authorized by votes of said board to sign such certificates. Said certificate shall contain a statement of the name, birthplace, date of birth, and age of child at date of statement. This statement shall be signed and acknowledged under oath or affirmation before the person authorized to issue the certificate. The certificate shall also contain a statement or certificate by the officer issuing the same that the child can read at sight and write legibly simple sentences in the English language, or that said child if unable so to read and write is regularly attending a day or evening school or has been excused by the school board from said attendance as provided by section five (5), and that if under the age required by law for the attendance of all children at school, said child has in the year next preceding the issuing of said certificate attended school as required by law. If attendance has been at a private school there must also be added the signature of the teacher in charge of the same followed by words certifying to school attendance. The person signing the certificate shall have authority to administer the oath provided therein but no fee shall be charged therefor. The commissioner of labor is hereby authorized and directed to prepare blank certificates such as are called for by this section and furnish the same to the superintendents of schools and school boards of the State.

§ 9. The statement in the certificate giving the birthplace and age of the child shall be signed by the father, if living, and resident of the same city or town; if not, by his mother; or if his mother is not living, or if living is not a resident of the same city or town, by his guardian; if a child has no father or mother or guardian living in the same city or town his own signature to the certificate may be accepted by the person authorized to approve the same.

Criminal offenses by corporation; legalizing acknowledgments — Acts, April 8, 16, 1895.

§ 10. Every factory, workshop, mine, mercantile establishment or other place in which or in connection with which children are engaged at labor of any kind, shall at all times be subject to visitation by the members or agents of the board of education or board of trustees of the city, town or district in which said factory, workshop, mine, establishment or place is situated.

§ 11. The words factory and workshop in this act shall have the same meaning as set forth in chapter seven (7) of the general laws of eighteen hundred and ninety-three (1893).

§ 12. Every parent or guardian of a child under sixteen (16) years of age who permits the employment of any child contrary to the provisions of this act, or who in making the statement called for by section eight (8) of this act certifies to any materially false statement therein, and every owner, superintendent, agent or overseer of any factory, workshop or mercantile establishment, telegraph, or telephone company, district messenger company or other corporation who employs or permits to be employed therein or thereby any child contrary to the provisions of this act, and any person who employs a child contrary to the provisions of this act or violates the provisions of section ten (10) of this act shall be guilty of a misdemeanor and upon conviction thereof before any competent court shall be fined not less than twenty (20) nor more than fifty (50) dollars for each and every offense. A failure to produce to an officer or employe of the bureau of labor, or to a member or authorized agent of the board of education or board of trustees of the city or school district in which the said child is employed, on demand, the certificate and register required by this act, shall be prima facie evidence of the illegal employment of the child whose certificate is not produced.

§ 13. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 14. This act shall take effect and be in force from and after its passage.

(Approved April 5, 1895.)

#### Act 10.

AN ACT relative to criminal offenses committed by corporations.

Be it enacted by the legislature of the State of Minnesota:

Section 1. When an indictment against a corporation is filed in any district court, charging such corporation with the commission of a crime, a summons shall be issued by the clerk of the court in which the indictment is found, signed by one of the judges of said court, commanding the sheriff to forthwith notify the accused thereof, and commanding the accused to be and appear before said court within

twenty-four hours after the service of such summons upon it. Such summons together with a copy of the indictment shall be at once delivered by said clerk to said sheriff and by said sheriff at once served and returned in the manner provided for the service of the summons upon said corporation in a civil action. When a complaint against a corporation charging it with the commission of crime is made before any justice of the peace or in any municipal court a like summons shall be issued signed by such justice of the peace, or by the judge of such municipal court, as the case may be, which said summons together with a copy of said complaint, shall be delivered at once to the sheriff who shall at once serve the same in the manner hereinbefore provided. A corporation upon such service being made shall appear within the time limited by said summons by one of its officers or by counsel; and upon such appearance and thereafter the same course shall be pursued as nearly as may be, as upon the appearance of an individual to an indictment, or complaint and warrant, charging him with the same offense. Upon the failure of such corporation to make such appearance the said clerk, justice of the peace or municipal judge, shall enter or cause to be entered a plea of "not guilty," and upon such appearance being made or plea entered the corporation shall be deemed thenceforth continuously present in court until the case is finally disposed of. If the corporation is found guilty and a fine imposed, it shall be entered and docketed by the clerk, justice of the peace or judge of the municipal court as the case may be, as a judgment against the corporation, and it shall be in force and of the same effect and shall be enforced against such corporation in the same manner as if the judgment had been recovered against it in a civil action.

§ 2. This act shall take effect and be in force from and after its passage.

(Approved April 8, 1895.)

#### Act 11.

AN ACT to legalize acknowledgments taken by officers of corporations as notaries public of instruments in which the corporation was interested.

Be it enacted by the legislature of the State of Minnesota:

Section 1. That all acknowledgments heretofore taken by a notary public who was also an officer or director of a corporation organized under the laws of this State or any law of the United States which corporation was interested either as a grantor or grantee in the instrument acknowledged are hereby legalized and made as effectual as if the notary public had not been an officer or director of the corporation interested.



Extension of existence; designation of agent, etc.—Acts, April 19, 22, 25, 1895.

§ 2. This act shall take effect and be in force from and after its passage.  
(Approved April 16, 1895.)

#### Act 12.

AN ACT to legalize articles and acts of corporations organized under chapter twenty-three (23) of the general laws of eighteen hundred and sixty-seven (1867).

Be it enacted by the legislature of the State of Minnesota:

Section 1. That all articles of incorporation, amendments thereto, acts or by-laws of corporations organized and existing under and by virtue of the provisions of chapter twenty-three (23) of the general laws of the year eighteen hundred and sixty-seven (1867) of the State of Minnesota and of acts amendatory thereof and supplementary thereto, providing for the issue of capital stock by such corporations are hereby legalized and made valid and of the same force and effect as if such had been specifically provided by law.

§ 2. This act shall take effect and be in force from and after its passage.  
(Approved April 19, 1895.)

See Act of 1891, and cross-references, at p. 41.

#### Act 13.

AN ACT to authorize the extension of the term of corporate existence in certain cases.

Be it enacted by the legislature of the State of Minnesota:

Section 1. That if any corporation organized under any general laws of this State, and of a class authorized by law to extend the term of corporate existence, shall, desiring to effect such extension, have heretofore attempted so to do, by causing to be instituted within the original term of its corporate existence, proceedings for that purpose, which were void or ineffectual on account of the expiration of the original term of the corporate existence before the completion of such proceedings, or by reason of other defects or irregularities therein; such corporation may at any time within six (6) months from the passage of this act, take new proceedings prescribed by law for the extension or renewal of its corporate existence, or at its election may complete the proceedings already instituted as aforesaid, in like manner and with like effect as though the original term of its corporate existence had not expired; and thereafter all acts of the stockholders, directors, and officers of such corporation, taken between the expiration of the original corporate term and the time of the actual extension under the provisions of this act, shall be of the same force and validity as though

said former proceedings for extension had been valid. Provided, however, That this act shall not apply to corporations, the charters of which have been declared forfeited by the final judgment of any court of competent jurisdiction in this State, in an action brought for that purpose; And provided further, That this act shall not apply to corporations the original terms of which expired more than three (3) years prior to the passage of this act.

§ 2. This act shall take effect and be in force from and after its passage.  
(Approved April 22, 1895.)

#### Act 14.

AN ACT to provide for the appointment, by corporations created or organized under the laws of another State, of agents to receive service of summons.

Be it enacted by the legislature of the State of Minnesota:

Section 1. Every corporation created or organized under the laws of any other State or territory or foreign country before it shall transact any business in this State, or acquire, hold, or dispose of property, real, personal or mixed, within this State, shall appoint an agent in writing who shall reside at some accessible point in this State duly authorized by it to accept service of summons or process, and upon whom service of summons or process may be made in any civil action in which said corporation may be a party, the cause of which said action arose in this State, and service upon such agent shall be taken and held as due and sufficient service upon any such corporation. A duly authenticated copy of the appointment or commission of such agent shall be filed and recorded in the office of the secretary of State and of the register of deeds of the county where said agent resides, and a certified copy thereof by the secretary of State or register of deeds shall be conclusive evidence of the appointment and authority of such agent.

§ 2. In case any such corporation shall fail to so appoint such agent to receive service of summons or process, the summons or any process in any civil action or proceeding wherein such foreign corporation is defendant, which has property within this State, or the cause of action against which arose therein, may be served upon such foreign corporation by delivering a copy of such summons or process to the president, secretary, or any other officer, or on any agent of such corporation, or in the absence from the State of such president, secretary, other officer or agent of which the return of the sheriff of the county in which any such action shall be begun shall be conclusive evidence, then to any stockholder of such corporation, and such service so made shall be due and sufficient service upon any such corporation.

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Employees, blacklisting and coercing — Acts, April 25, 26, 1895.

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§ 3. This act shall take effect and be in force from and after its passage.  
(Approved April 25, 1895.)

See § 2646, and cross-references.

**Act 15.**

AN ACT to prohibit the practice of blacklisting and the coercing and influencing of employes by their employers.

Be it enacted by the legislature of the State of Minnesota:

Section 1. It shall be unlawful for any two (2) or more employers or any two (2) or more corporations to combine or agree to combine or confer together for the purpose of interfering with, or preventing any person or persons from procuring employment, either by threats, promises, or by circulating or causing to be circulated, blacklists, or for the purpose of procuring and causing the discharge of any employe or employes by any means whatsoever.

§ 2. No company, corporation or partnership in this State shall authorize, permit or allow any of its or their agents to nor shall any of its or their agents blacklist any discharged employe or employes, or by word or writing seek to prevent, hinder or restrain such discharged employe or any employe who may have voluntarily left such company's or person's service from obtaining employment by any other person or company.

§ 3. No person or persons, employer or employers of labor, and no agent or agents, or officer or officers, employe or employes of any corporation or corporations on behalf of such corporation or corporations shall require, coerce or compel, demand or influence, any person or persons, employe or employes, laborer, or mechanic to enter into an agreement, either written or verbal, from such person or persons, employe, laborer or mechanic not to join or become or remain a member of any labor organization, as a condition of such person or persons securing employment or continuing in the employment of any such person or persons, employer or employers, corporation or corporations.

§ 4. Any person or persons, employer or employers of labor, and any agents, representatives or employes of any person or persons, employer or employers, who shall be guilty of any violation of the provisions of any preceding section of this act, shall be guilty of a misdemeanor and upon conviction, shall be punished by a fine not exceeding one hundred (100) dollars or imprisonment in the county jail for a period of not more than ninety (90) days.

§ 5. It shall be the duty of the county attorney of any county in which a civil action in the name of the State of Minnesota shall be brought in accordance with the provisions of this act, to begin and prosecute all such

suits to a termination whenever information is given him by any person that any employer or employers or corporation; or his or its officers, agents or employers have violated any of the provisions of this act.

§ 6. It shall be the duty of the commissioner of labor to see that all the conditions of this act are enforced.

§ 7. This act shall take effect and be in force from and after its passage.  
(Approved April 25, 1895.)

See § 2667, subd. 5, and cross-references.

**Act 16.**

AN ACT to provide a penalty for coercing or influencing or making demands upon or requirements of employes, servants, laborers and persons seeking employment.

Be it enacted by the legislature of the State of Minnesota:

Section 1. That it shall be unlawful for any individual, or member of any firm, or any agent, officer or employe of any company or corporation to coerce, require, demand or influence any person or persons to enter into any agreement, either written or verbal, not to join or become or remain a member of any lawful labor organization or association as a condition of such person or persons securing employment or continuing in the employment of such individual, firm or corporation.

§ 2. Any person who, acting for himself either directly or through another person, agent or agency, or who acting as agent or employe of another person or persons, who as a member of any firm, or as an officer, agent or employe of any company or corporation, coerces, requires, demands or influences any person or persons to enter into any agreement, either written or oral, not to join or become or remain a member of any lawful labor organization or association as a condition of such person or persons securing employment or continuing in the employment of such individual, firm or corporation, is guilty of a misdemeanor.

§ 3. This act shall take effect and be in force from and after its passage.

(Approved April 26, 1895.)

See § 2667, subd. 5, and cross-references.

**Act 17.**

AN ACT to legalize certain corporations and to validate transfers of property made by such corporations.

Be it enacted by the legislature of the State of Minnesota:

Section 1. That in all cases where an attempt has heretofore been made to form, organize or renew any corporation under any of the general laws or statutes of the State of Minnesota, and the persons

Transfer agents; legalizing deeds — Acts, April 21, 23, 1897.

attempting to form, organize or renew any corporation have actually adopted, signed and filed in the office of the secretary of State, articles of incorporation in which the business therein specified was such as might be lawfully carried on under said laws by such corporation, and have in fact issued stock and transacted business under the corporate name therein assumed, and have in good faith received or transferred any property, real or personal, such attempted formation, organization or renewal in each and every such case is hereby legalized and declared valid and effectual under the name assumed as an incorporation under the laws of the State of Minnesota, notwithstanding the omission of any matter, thing or requirement by law prescribed to be done or observed in such formation, organization or renewal thereof. And any and all conveyances of property, real or personal, in good faith and lawful form made to or by any such body under the corporate name so assumed are hereby legalized and declared as valid and effectual for the purposes intended thereby as if such body corporate had been originally, in all things duly and legally incorporated. Provided, That this act shall not apply to any suits now pending, involving the validity of such organization. Provided, That this act shall not have the effect of reviving or renewing any corporation which has expired by limitation of time or shall have been dissolved by any court of competent jurisdiction.

§ 2. This act shall take effect and be in force from and after its passage.

(Approved April 26, 1895.)

See § 2645, and cross-references. Defective organization cured. § 3146.

#### Act 18.

AN ACT to compel the transfer agents of any foreign or domestic corporation doing business in this State to exhibit the transfer-book or list of stockholders of said corporation to any stockholder of the same.

Be it enacted by the legislature of the State of Minnesota:

Section 1. The transfer agent in this State of any foreign or domestic corporation, whether such agent shall be a corporation or a natural person, shall at all times during the usual hour of transacting business, exhibit to any stockholder of such corporation, when required by him, the transfer-book and a list of the stockholders thereof if in their power to do so, and for every violation of the provisions of this section such agent, or any officer or clerk of such agent, shall forfeit the sum of two hundred and fifty dollars (\$250), to be recovered by the person to whom such refusal was made.

§ 2. This act shall take effect from and after its passage.

(Approved April 21, 1897.)

See § 2454, cross-references and note.

#### Act 19.

AN ACT to legalize certain deeds heretofore made by corporations and officers thereof, for and on behalf of corporations.

Be it enacted by the legislature of the State of Minnesota:

Section 1. That all deeds heretofore made by the officers of corporations created by or under the laws of this State of any real estate belonging to said corporation, and which deed or deeds such officers act in their official capacity as officers thereof, intending to convey the property therein described as the property of such corporation, shall be valid conveyance thereof, and to all such property, notwithstanding the fact that in the body of any such instrument or instruments the names of such officers appear instead of the name of such corporation, and the same and all such are hereby legalized and confirmed so far as it relates to any question of defect by reason of such officers' names appearing in the body of such instrument or instruments, instead of the corporate name of such corporation, nor shall said deed or deeds be invalid by reason of the absence of witnesses to the signature of such officers, nor shall the same be invalid by reason of the failure of the wife of any such officer to join in said deed, but the same and all such are hereby declared to be valid conveyance of any such real estate therein described.

§ 2. That all such instruments of the description in the preceding section shall be entitled to be recorded in the office of the register of deeds of the proper county in the same manner and upon the same conditions and be subject in all respects to the same rules of law as other deeds.

§ 3. The provisions of this act shall not apply to any action or proceeding now pending in any court in this State.

§ 4. This act shall take effect and be in force from and after its passage.

(Approved April 23, 1897.)

#### Act 20.

AN ACT to provide for the enforcement by assignees and receivers of the liability of all stockholders, directors, trustees and other superintending officers of corporations for the benefit of creditors thereof.

Be it enacted by the legislature of the State of Minnesota:

Section 1. Whenever any corporation whose stockholders, or directors, trustees or



## Enforcement of liability of stockholders, etc.—Act, April 23, 1897.

other superintending officers shall be liable to its creditors, on account of any liability created by law, shall have become insolvent, and shall have made an assignment of its property for the benefit of its creditors, or a receiver shall have been appointed for such corporation, it shall be the duty of such receiver or assignee, if no action by any creditor of such insolvent corporation shall be commenced against such stockholders, directors, trustees and officers of such corporation under the provisions of chapter seventy-six (76) of the general statutes of the State of Minnesota, for the year eighteen hundred and seventy-eight (1878), within six months from the date of such assignment or appointment of such receiver, to forthwith commence an action against such stockholders, directors, trustees and officers of such corporation in his own name as such assignee or receiver, to enforce all such liability; and such action shall conform as nearly as practicable to the provisions of said chapter seventy-six (76) and he shall bring such action to the speediest possible termination, without awaiting the winding up or final disposal of the insolvent estate. The amount collected through such proceeding shall be, as soon as possible, paid

to the creditors of such corporation; and if there shall be any surplus property or money after the payment of all claims against said insolvent estate duly allowed, and the necessary costs and expenses of such assignee or receiver, then the same shall, after due notice to all interested parties given by such receiver or assignee in a manner to be prescribed by the court for a final hearing and accounting of such assignee or receiver, be turned over to such corporation. And the court may, in its discretion in said proceeding, upon application of any interested party or upon its own motion after due notice to all interested parties, make a partition and distribution of such surplus property and money to the persons who may be entitled thereto, and said court shall make and enter its judgment of partition and distribution in such proceeding.

§ 2. All acts and parts of acts inconsistent with this act are hereby repealed.

§ 3. This act shall take effect and be in force from and after its passage.

(Approved April 23, 1897.)

See Const., art. X, § 3; § 2455, note, and cross-references. § 2663.



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MISSISSIPPI.

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# MISSISSIPPI.

## CONSTITUTION OF MISSISSIPPI — 1890.

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE III.

##### Bill of Rights.

- Sec. 16. Laws impairing the obligation of contracts prohibited.  
17. Private property taken for public use.

#### ARTICLE IV.

##### Legislative Department.

- Sec. 84. Restrictions upon holding of lands by corporations.  
87. Special laws for benefit of corporations prohibited.  
88. Corporations to be created by general laws.  
90. Special laws prohibited in certain cases.  
95. State lands never to be donated to private corporations.  
100. Obligations of corporations held by State shall never be remitted.  
112. Taxation of corporations and railroads.

#### ARTICLE VII.

##### Corporations.

- Sec. 178. Corporations to be formed under general laws only; duration.  
179. Pre-existing corporations hold charters subject to this Constitution.  
180. Organization under charters must take place within one year from adoption of this Constitution.  
181. Private corporations to be taxed in same way as individuals.  
182. Power to tax corporations shall never be surrendered or abridged.  
183. Municipal corporations not to become subscribers to capital stock.  
184. Railroads are public highways and railroad companies are common carriers.  
185. Rolling stock liable to execution.  
186. Extortion and unjust discrimination to be prevented.  
187. Railroads must pass through county seats.  
188. Free passes to public officers forbidden.  
189. All charters to be recorded.  
190. Right of eminent domain shall never be abridged.  
191. All interference with social or political rights of employes forbidden.  
192. Cities and towns may aid manufacturers.  
193. Rights and remedies of employes for negligent injuries.  
194. Method of voting for directors or managers.  
195. Certain companies declared to be common carriers.  
196. Fictitious issue or increase of stock or bonds shall be void.  
197. Foreign corporations not to build or operate railroads in this State.  
198. Trusts to be prohibited.  
199. The term "corporation" defined.  
200. Legislature shall enforce provisions of this article.

#### ARTICLE XIV.

##### General Provisions.

- Sec. 258. State not to become stockholder in, or loan credit to, foreign corporations.

#### ARTICLE III.

##### Bill of Rights.

§ 16. Ex post facto laws, or laws impairing the obligation of contracts, shall not be passed.

Legislature has power to alter, amend or repeal charter. Const., art. VII, § 178. Power to tax corporations not to be amended. Id., § 182.

[Charter of a corporation is a contract between the State and the corporation, the obligation of which cannot be impaired. R. R. Co. v. Harris, 5 C. 517; Bank v. State, 6 S. & M. 599; Payne v. Baldwin, 3 S. & M. 661; O'Donnell v. Bailey, 2 C. 386. And a contract between a member and the corporation itself is within protection of the Constitution. R. R. Co. v. Harris, supra. And while a corporation has implied power to accept of amendments to its charter, it cannot accept such as fundamentally change the nature of the corporation if a single corporator dissent. Id.; Hester v. R. R. Co., 3 G. 378; Champlion v. R. R. Co., 6 Id. 692. But it is impracticable to lay down any general rule as a sure guide in determining the extent of the materiality of the change; each case must be determined by itself. Id.; see, also, Hawkins v. R. R. Co., 6 G. 688.]

§ 17. Private property shall not be taken or damaged for public use, except on due compensation being first made to the owner or owners thereof, in a manner to be prescribed by law; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be public shall be a judicial question, and, as such, determined without regard to legislative assertion that the use is public.

See Const., art. IV, § 84. State lands not to be donated to corporations. Id., § 95. Legislature may condemn and take property of corporations. Const., art. VII, § 190.

#### ARTICLE IV.

##### Legislative Department.

§ 84. The legislature \* \* \* may limit or restrict the acquiring or holding of lands by corporations.

See Const., art. III, § 17; art. VII, § 190. Corporations may convey lands. Code, § 2437. Extent of power to own property. Id., § 838.



Powers of legislature; corporations — Const., §§ 87, 88, 90, 95, 100, 112, 178, 179.

§ 87. No special or local law shall be enacted for the benefit of individuals or corporations, in cases which are or can be provided for by a general law, or where the relief sought can be given by any court of this State; nor shall the operation of any general law be suspended by the legislature for the benefit of any individual or private corporation or association, and in all cases where a general law can be made applicable, and would be advantageous, no special law shall be enacted.

Corporations must be created by general laws. Const., art. IV, § 88. See Const., § 90. General laws. §§ 832-860.

§ 88. The legislature shall pass general laws, \* \* \* under which corporations may be created, organized, and their acts of incorporation altered; and all such laws shall be subject to repeal or amendment.

General laws. §§ 832-860. Special laws prohibited. Const., art. IV, §§ 87, 90.

§ 90. The legislature shall not pass local, private, or special laws in any of the following enumerated cases, but such matter shall be provided for only by general laws, viz.:

(b) Changing the names of \* \* \* corporations;

(r) Conferring the power to exercise the right of eminent domain, or granting to any person, corporation, or association the right to lay down railroad tracks or street car tracks in any other manner than that prescribed by general law;

(u) Granting any lands under control of the State to any person or corporation.

See Const., art. IV, §§ 87, 88.

§ 95. Lands belonging to, or under the control of the State, shall never be donated, directly or indirectly, to private corporations or individuals, or to railroad companies. Nor shall such land be sold to corporations or associations for a less price than that for which it is subject to sale to individuals. This, however, shall not prevent the legislature from granting a right of way, not exceeding one hundred feet in width, as a mere easement, to railroads across State land, and the legislature shall never dispose of the land covered by said right of way so long as such easement exists.

Right to condemn property of corporations not to be abridged. Const., art. VII, § 190. State not to become stockholder. Art. XIV, § 258.

§ 100. No obligation or liability of any person, association, or corporation held or owned by this State, or levee board, or any county, city, or town thereof, shall ever be remitted, released or postponed, or in any way diminished by the legislature, nor shall such liability or obligation be extinguished ex-

cept by payment thereof into the proper treasury; nor shall such liability or obligation be exchanged or transferred except upon payment of its face value; but this shall not be construed to prevent the legislature from providing by general law for the compromise of doubtful claims.

Obligation of contracts inviolate. Const., art. III, § 16.

§ 112. \* \* \* The legislature may provide for a special mode of valuation and assessment for railroads, and railroad and other corporate property, or for particular species of property belonging to persons, corporations, or associations not situated wholly in one county. But all such property shall be assessed at its true value, and no county shall be denied the right to levy county and special taxes upon such assessment as in other cases of property situated and assessed in the county.

Corporations to be taxed. Const., art. VII, § 181. Power to tax never to be abridged. Id., § 182. Revenue laws. Code, §§ 3744-3758; see, also, Const., art. VII, § 178.

## ARTICLE VII.

### Corporations.

§ 178. Corporations shall be formed under general laws only. The legislature shall have power to alter, amend, or repeal any charter of incorporation now existing and revocable, and any that may hereafter be created, whenever, in its opinion, it may be for the public interest to do so; Provided, however, That no injustice shall be done to the stockholders. No charter for any private corporation for pecuniary gain shall be granted for a longer period than ninety-nine years. In assessing for taxation the property and franchises of corporations having charters for a longer period than ninety-nine years, the increased value of such property and franchises arising from such longer duration of their charters shall be considered and assessed; but any such corporation shall have the right to surrender the excess over ninety-nine years of its charter.

Special laws concerning corporations prohibited. Const., art. IV, §§ 87, 88, 90. General laws for forming corporations. Code, §§ 832 et seq. Revenue laws. §§ 3744 et seq.

§ 179. The legislature shall never remit the forfeiture of the franchise of any corporation now existing, nor alter nor amend the charter thereof, nor pass any general nor special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter and franchises subject to the provisions of this Constitution; and the reception by any corporation of any provision of any such laws, or the taking of any benefit or advantage

from the same, shall be conclusively held an agreement by such corporation to hold thereafter its charter and franchises under the provisions hereof.

Renewals and amendments. Code, § 834.

§ 180. All existing charters or grants of corporate franchise under which organizations have not in good faith taken place at the adoption of this Constitution shall be subject to the provisions of this article; and all such charters under which organizations shall not take place in good faith and business be commenced within one year from the adoption of this Constitution, shall thereafter have no validity; and every charter or grant of corporate franchise hereafter made shall have no validity, unless an organization shall take place thereunder and business be commenced within two years from the date of such charter or grant.

§ 181. The property of all private corporations for pecuniary gain shall be taxed in the same way and to the same extent as the property of individuals, but the legislature may provide for the taxation of banks and banking capital, by taxing the shares according to the value thereof (augmented by the accumulations, surplus, and unpaid dividends), exclusive of real estate, which shall be taxed as other real estate. Exemptions from taxation to which corporations are legally entitled at the adoption of this Constitution, shall remain in full force and effect for the time of such exemptions as expressed in their respective charters, or by general laws, unless sooner repealed by the legislature. And domestic insurance companies shall not be required to pay a greater tax in the aggregate than is required to be paid by foreign insurance companies doing business in this State, except to the extent of the excess of their ad valorem tax over the privilege tax imposed upon such foreign companies; and the legislature may impose privilege taxes on building and loan associations in lieu of all other taxes except on their real estate.

See Const., art. IV, § 112; art. VII, § 182. Revenue laws. Code, §§ 3744 et seq.

§ 182. The power to tax corporations and their property shall never be surrendered or abridged by any contract or grant to which the State or any political subdivision thereof may be a party, except that the legislature may grant exemption from taxation in the encouragement of manufactures and other new enterprises of public utility extending for a period not exceeding five years, the time of such exemptions to commence from date of charter, if to a corporation; and if to an individual enterprise, then from the commencement of work; but when the legislature grants such exemptions for a period of five years or less, it shall be done by

general laws, which shall distinctly enumerate the classes of manufactures and other new enterprises of public utility entitled to such exemptions, and shall prescribe the mode and manner in which the right to such exemptions shall be determined.

See Const., art. III, § 16; art. IV, § 112; art. VII, § 181. Revenue laws. Code, §§ 3744, 3750, 3758.

[Any legislation, by charter or otherwise, which provides that property of corporations for profit shall be exempt from taxation, is unconstitutional. *Mills v. Cook*, 56 Miss. 40, 53.]

§ 183. No county, city, town, or other municipal corporation shall hereafter become a subscriber to the capital stock of any railroad or other corporation or association, or make appropriation, or loan its credit in aid of such corporation or association. All authority heretofore conferred for any of the purposes aforesaid by the legislature or by the charter of any corporation, is hereby repealed. Nothing in this section contained shall affect the right of any such corporation, municipality, or county to make such subscription where the same has been authorized under laws existing at the time of the adoption of this Constitution, and by a vote of the people thereof, had prior to its adoption, and where the terms of submission and subscription have been or shall be complied with, or to prevent the issue of renewal of bonds, or the use of such other means as are or may be prescribed by law for the payment or liquidation of such subscription, or of any existing indebtedness.

State not to become stockholder or loan credit. Const., art. XIV, § 258. Municipalities may aid manufactories. Art. VII, § 192.

§ 184. All railroads which carry persons or property for hire shall be public highways, and all railroad companies so engaged shall be common carriers. Any company organized for that purpose under the laws of the State shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with roads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad; and all railroad companies shall receive and transport each other's passengers, tonnage, cars, loaded or empty, without unnecessary delay or discrimination.

See Const., art. VII, §§ 187, 188, 193, 195, 197.

§ 185. The rolling stock belonging to any railroad company or corporation in this State shall be considered personal property, and shall be liable to execution and sale as such.

§ 186. The legislature shall pass laws to prevent abuses, unjust discrimination, and extortion in all charges of express, telephone,



sleeping car, telegraph, and railroad companies, and shall enact laws for the supervision of railroads, express, telephone, telegraph, sleeping-car companies, and other common carriers in this State, by commission or otherwise, and shall provide adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their franchises.

Trusts prohibited. § 198, post.

§ 187. No railroad hereafter constructed in this State shall pass within three miles of any county seat without passing through the same, and establishing and maintaining a depot therein, unless prevented by natural obstacles; Provided, Such town or its citizens shall grant the right of way through its limits, and sufficient grounds for ordinary depot purposes.

§ 188. No railroad or other transportation company shall grant free passes or tickets, or passes or tickets at a discount, to members of the legislature, or any State, district, county, or municipal officers, except railroad commissioners. The legislature shall enact suitable laws for the detection, prevention, and punishment of violations of this provision.

§ 189. All charters granted to private corporations in this State shall be recorded in the chancery clerk's office of the county in which the principal office or place of business of such company shall be located.

See Code, § 823.

§ 190. The exercise of the right of eminent domain shall never be abridged, or so construed as to prevent the legislature from taking the property and franchises of incorporated companies, and subjecting them to public use; and the exercise of the police powers of the State shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe upon the rights of individuals or the general well-being of the state.

See Const., art. III, § 17.

§ 191. The legislature shall provide for the protection of the employes of all corporations doing business in this State from interference with their social, civil, or political rights by said corporations, their agents or employes.

See Code, § 840. Remedies of employes for negligent injuries. § 193, post.

§ 192. Provision shall be made by general laws whereby cities and towns may be authorized to aid and encourage the establishment of manufactories, gas works, water works, and other enterprises of public utility other than railroads, within the limits of

said cities or towns, by exempting all property used for such purposes, from municipal taxation for a period not longer than ten years.

Municipal corporations not to become stockholders. § 183, ante.

§ 193. Every employe of any railroad corporation shall have the same right and remedies for any injury suffered by him from the act or omission of said corporation or its employes, as are allowed by law to other persons not employes, where the injury results from the negligence of a superior agent or officer, or of a person having the right to control or direct the services of the party injured, and also when the injury results from the negligence of a fellow servant engaged in another department of labor from that of the party injured, or of a fellow servant on another train of cars, or one engaged about a different piece of work. Knowledge by any employe injured, of the defective or unsafe character or condition of any machinery, ways, or appliances, shall be no defense to an action for injury caused thereby, except as to conductors or engineers in charge of dangerous or unsafe cars, or engines voluntarily operated by them. Where death ensues from any injury to employes, the legal or personal representatives of the person injured shall have the same right and remedies as are allowed by law to such representatives of other persons. Any contract or agreement, express or implied, made by any employe to waive the benefit of this section shall be null and void; and this section shall not be construed to deprive any employe of a corporation or his legal or personal representative, of any right or remedy that he now has by the law of the land. The legislature may extend the remedies herein provided for to any other class of employes.

See § 191, ante.

§ 194. The legislature shall provide, by law, that in all elections for directors or managers of incorporated companies every stockholder shall have the right to vote, in person or by proxy, the number of shares of stock owned by him for as many persons as there are directors or managers to be elected, or to cumulate said shares so as to give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall see fit; and such directors or managers shall not be elected in any other manner; but no person who is engaged or interested in a competing business, either individually or as employe or stockholder, shall serve on any board of directors of any corporation without the consent of a



majority in interest of the stockholders thereof.

See Code, § 837.

§ 195. Express, telegraph, telephone, and sleeping-car companies are declared common carriers in their respective lines of business, and subject to liability as such.

Railroads are common carriers. Art. VII, § 184.

§ 196. No transportation corporation shall issue stocks or bonds except for money, labor done (or in good faith agreed to be done), or money or property actually received; and all fictitious increase of stock or indebtedness shall be void.

See Code, § 850.

§ 197. The legislature shall not grant to any foreign corporation or association a license to build, operate, or lease any railroad in this State; but in all cases where a railroad is to be built or operated, and the same shall be partly in this State and partly in another State or in other States, the owners or projectors thereof shall first become incorporated under the laws of this State; nor shall any foreign corporation or association lease or operate any railroad in this State, or purchase the same or any interest therein. Consolidation of any railroad lines and corporations in this State with others shall be allowed only where the consolidated company shall become a domestic corporation of this State. No general or special law shall ever be passed for the benefit of any foreign corporation operating

a railroad under an existing license from this State, or under an existing lease; and no grant of any right or privilege, and no exemption from any burden, shall be made to any such foreign corporation except upon the condition that the owners or stockholders thereof shall first organize a corporation in this State under the laws thereof, and shall thereafter operate and manage the same, and the business thereof, under said domestic charter.

[Contracts of foreign corporations to be performed elsewhere. See *Hart v. Foundry Co.*, 72 Miss. 809; s. c., 17 S. Rep. 769.]

§ 198. The legislature shall enact laws to prevent all trusts, combinations, contracts, and agreements inimical to the public welfare.

§ 199. The term "corporation" used in this article shall include all associations and all joint-stock companies for pecuniary gain having privileges not possessed by individuals or partnerships.

§ 200. The legislature shall enforce the provisions of this article by appropriate legislation.

#### ARTICLE XIV.

##### General Provisions.

§ 258. The credit of the State shall not be pledged or loaned in aid of any person, association, or corporation; and the State shall not become a stockholder in any corporation or association. \* \*

Municipalities not to become stockholders. Const., art. VII, § 183.

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## CHAPTER V.

## Appeals.

Sec. 58. Bonds by corporations.

§ 58. Appeal-bonds may be executed by a corporation by its authorized agent or attorney, in the name of the corporation, without affixing its corporate seal; and such bond, when so executed by the attorney of record of a corporation, shall be held and conclusively presumed to have been executed by the authority of such corporation.

See § 842.

## CHAPTER IX.

## Attachment against Debtors.

Sec. 125. In what cases a remedy.  
129. Affidavit.

§ 125. The remedy by attachment shall apply to all actions or demands founded upon any indebtedness, or for the recovery of damages for the breach of any contract, express or implied, and to actions founded upon any penal statute.

[One non-resident may attach another. *Barrow v. Burbridge*, 41 Miss. 622.]

§ 129. The creditor, his agent or attorney, shall make oath before a judge of the supreme court, a judge of a circuit court, or a chancellor; or before a clerk of a circuit court or chancery court or the deputy of such clerk, or any justice of the peace, or the mayor of any city, town, or village, of the amount of his debt or demand, to the best of his knowledge and belief, and shall also make oath to one or more of the following grounds for attachment:

(1) That the defendant is a foreign corporation, or a non-resident of this State; or

(11) That defendant is a banker, banking company or corporation, and received deposits of money knowing at the time he or it was insolvent; or has made or published a false or fraudulent statement as to his or its financial condition.

## CHAPTER XX.

## Chancery Courts.

Sec. 534. Answer of a corporation.

§ 534. \* \* \* The answer of a corporation need not be under its seal, but shall be sworn to by its president, general manager,

or superintendent or other general officer, unless an answer under oath shall likewise be waived.

## CHAPTER XXV.

## Corporations.

Sec. 832. What corporations may be created under this chapter.

833. How corporations created.

834. Renewals and amendments.

835. To be recorded, etc.

836. Of the powers and organization of corporations.

837. Stockholders' right in the election of directors.

838. Limits on value of property.

839. Mortgage or deed of trust subordinate to certain claims.

840. Social, civil and political rights of employees protected.

841. Defective organization not a defense.

842. May execute bond in suit.

843. Installments of stock may be sued for.

844. Stockholder's liability, and transfer of stock.

845. Property and franchise of corporation salable under judgment.

846. Franchise redeemable within six months.

847. On dissolution, assets vested in stockholders, etc.

848. Power of corporations after dissolution.

849. Of foreign corporations.

850. Stock must be actually paid for.

851. Restrictions on loans.

852. Capital not to be withdrawn or dividend declared by insolvent.

853. Debts in excess of capital stock.

860. Extent of the chapter.

§ 832. (As amended February 10, 1898.) Corporations for every lawful purpose and of every kind, except for the construction and operation of a railroad other than street railroads, and the carrying on of an insurance business, may be created under the provisions of this chapter; Provided, That the exception as to insurance companies shall not apply to mutual insurance associations organized for the purpose of insuring the property of its own members only; and such associations may be incorporated under the provisions of this chapter.

Cannot be created by special laws. Const., art. IV, §§ 88, 90; art. VII, § 178. Renewals and amendments. § 834.

[A corporation is embraced in the term "person" or "individual." *Bank v. State*, 12 S. & M. 456. "Corporation" defined. Const., art. VII, § 199.]

§ 833. The persons desiring to be incorporated may prepare a charter, drawn up on parchment or paper, which shall be headed "The charter of incorporation of \_\_\_\_\_," and it shall contain a clear and definite state-

ment of the purposes for which the corporation is created, the names of the persons desiring to form the corporation, the corporate name by which it is to be known, the powers to be exercised, the period for which said corporation is to exist—never more than fifty years—together with whatever else may be proper to be stated. Charters for telegraph and telephone companies shall also describe the line they propose building and constructing and the localities it is intended to traverse. And the proposed charter shall be published three consecutive weeks in one or more newspapers published at the domicile of the proposed corporation, and if there be not a newspaper published in the county where such proposed corporation is to be domiciled, then by publication in one or more newspapers published in this State and having circulation in the county of the domicile of the proposed corporation; but corporations for masonic and odd fellows' lodges, temperance societies, charitable associations, schools and literary institutions, religious societies, fire companies, mechanics' associations, fair associations, and agricultural societies shall not be required to make such publication. And the charter so proposed and published, if required to be, shall be submitted for approval to the governor, who shall take the advice of the attorney-general as to the constitutionality and legality of the provisions of such charter; and if the governor approve it, he shall write his approval at the bottom of it, and sign his name thereto, and shall also cause the great seal of the State to be thereto affixed by the secretary of State; but the governor may require amendments or alterations to be made previous to signing the same, or, if deemed expedient by him, he may withhold his approval entirely; and the powers therein specified shall, by the approval of the charter, be vested in such corporation, and it shall go into operation at the time and on the terms and conditions specified.

See Const., art. III, § 16, and note. Defective organization not a defense. § 841.

[The words of a charter are to be construed as those of the incorporators rather than of the State, and are to be strictly construed in favor of the State. *State v. Simmons*, 70 Miss. 485; s. c., 12 S. Rep. 477.

A corporation is in complete existence when it has accepted charter. The performance of any act under it is a sufficient acceptance. *Perkins v. Sanders*, 56 Miss. 733.

Regularity of organization of a corporation cannot be questioned collaterally by person who has contracted with it. *Johnston v. Gumbel*, 19 S. Rep. 100.]

§ 834. Every corporation desiring a renewal or amendment of its charter, shall make publication as above, if the original charter were required to be published, setting forth at length in such publication, the nature and extent of the amendment or amendments desired; and the governor, with

the advice of the attorney-general, may grant the same. But in case of renewal merely, it shall be sufficient for the governor to give a certificate that the original charter is renewed, under the great seal of the State.

§ 835. Every charter so granted, and every amendment and certificate of renewal, shall be recorded at length in the office of the secretary of State, in a well-bound book to be kept by him for that purpose, to be furnished by the State, and in the office of the clerk of the chancery court of the county in which the corporation does business.

All charters to be recorded. Const., art. VII, § 189.

§ 836. Every corporation created under this chapter shall have succession for the time limited in the charter, but never exceeding fifty years; may determine the manner of calling and conducting meetings, the number of shares that shall entitle a member to a vote, and the mode of voting by proxy; may elect all necessary officers, and prescribe the duties, salaries, and tenure of officers; may sue and be sued, and prosecute and be prosecuted, to judgment and satisfaction, before any court; may have a corporate seal; may contract and be contracted with within the limits of the corporate powers; may sell and convey real estate, and may sell personal property; may borrow money and secure the payment of the same by mortgage or otherwise; may issue bonds and secure them in the same way, and may hypothecate its franchises; and may make all necessary by-laws not contrary to law. The first meeting of persons in interest, unless otherwise provided for, may be called by a notice published in some convenient newspaper for at least ten days before the time appointed for the meeting, which notice shall be signed by one or more persons named in the charter; and the meeting, when assembled, may proceed to organize the corporation.

Duration of corporations. Const., art. VII, § 178. Seal not necessary to appeal bond. § 58. Or to answer. § 534. May execute bond. § 842. Suit for installments of stock. § 843. Process, how served. §§ 3433, 3467. Quo warranto proceedings. §§ 3520-3539. Criminal procedure. §§ 1367-1370. Defective organization not a defense. § 841. Method of voting for directors. Const., art. VII, § 194. Trusts prohibited. Id., § 198. Fictitious issue of bonds void. Id., § 196. Restriction upon power to hold land. Const., art. IV, § 84. May convey land. § 2437. May hold how much property. § 838. Mortgage of future earnings invalid, when. § 839.

[A corporation possesses only the powers and capacities which are specifically granted, and such as are necessary to carry into effect those expressed powers. Hence it can only make such contracts as are connected with the purpose of its creation, and which are necessary, either directly or incidentally, to that end. *R. R. Co. v. Franks*, 41 Miss. 494; *Bacon v. Ins. Co.*, 2 G. 116; *Bank v.*



Nolan, 7 H. 508; Abby v. Billups, 6 G. 618; McIntyre v. Ingraham, 6 id. 25.

And power cannot be implied unless it be so necessary to the enjoyment of some right expressly granted, that without it that right would fail. *Id.*

A corporation having power to loan money has not necessarily power to borrow money, and prima facie no power to make a promissory note, and the holder of such note must, therefore, show the special circumstances which make it valid. *Bacon v. Ins. Co.*, 2 G. 116.

Expressed power "to acquire property by gift, purchase or otherwise," includes power to lease and incidentally power to make necessary covenants. *Abby v. Billups*, 6 G. 618.

Effect of general words in conferring power. *Lusk v. Lewis*, 3 G. 297.

Contracts ultra vires are either those entirely foreign to purpose of the existence of the corporation, or those which exceed the scope of granted powers; distinction between. *Haynes v. Covington*, 13 S. & M. 408; *Bank v. Nolan*, 7 H. 508; *Wade v. Soc.*, 7 S. & M. 663, 697; *Bank v. Archer*, 8 id. 151.

A contract not to exercise a corporate power was void. *Ellison v. R. R. Co.*, 7 G. 572.

President had no power to make contracts on behalf of the company except by authority conferred on him by board of directors. *Bacon v. Ins. Co.*, 2 G. 116.

Grants of exclusive privileges and powers are never presumed. And corporate franchises are to be strictly construed in favor of the State. *Collins v. Sherman*, 2 G. 679.

A corporation may make contracts under its corporate seal by a vote of the directors entered on its books, or by its agent acting within scope of his authority. And it may contract by parol or in writing; and binding contracts may be implied from its corporate acts, or the acts of its agents, without a vote, or deed, or writing. *Petrie v. Wright*, 6 S. & M. 647; *Abby v. Billups*, 6 G. 618. That is, where a particular mode of contract is not required by the charter. *Id.*

Private seal of chief officer sufficient if there be no common seal. *Deberry v. Holly Spring*, 6 G. 385.

In making a sale of its personal property, a private corporation may act without seal. Agency for the corporation in such cases may be proved, and authority to act for it implied, as in cases of natural persons. *Lumber Co. v. Cain*, 70 Miss. 628; s. c., 13 S. Rep. 239.

In absence of authority of by-laws, agreement between directors of two corporations to consolidate into one is ultra vires. *Greenville Compress v. Planters' Press*, 70 Miss. 669; s. c., 13 S. Rep. 879. Though it has been partly performed, such agreement cannot be specifically enforced but to extent that one corporation has received benefit from its partial execution, the other may, by proper proceedings, recover of it. *Id.*

A conveyance of land of a corporation executed by its officers, where purchase money is paid, passes equitable title without the use of a corporate seal. Whether the complete title passes is not decided. *McIver v. Abernathy*, 66 Miss. 79; s. c., 5 S. Rep. 519.

Unless restrained by charter or by-laws, or by a statute of State creating it, directors of a corporation have power in another State to issue bonds and secure them by mortgage of corporate assets, and their acts in so doing are not rendered invalid because done in pursuance of an order of stockholders at election assembled. *Thompson v. Water Co.*, 68 Miss. 423; s. c., 9 S. Rep. 821.

Majority of stockholders of a commercial corporation doing an unsuccessful and unprofitable business may sell its assets. *Berry v. Broach*, 65 Miss. 450. Stockholder who participates in such sale, even if it be voidable at election of non-participating stockholders, cannot avoid it when ratified by their acquiescence. *Id.*

Corporations may submit to arbitration. *R. R. Co. v. Scruggs*, 50 Miss. 285.

Contract of corporation outside of purpose of its creation is void, but if a contract is within its powers, but in excess of them, person with

whom it deals cannot set up such violation of its franchises to avoid the contract. *Littleworth v. Davis*, 50 Miss. 404.

At common law a corporation spoke and acted only by its common seal. This rule has been relaxed and it can now be bound by contracts made by its agents, though not under seal; and also on implied contracts, without either a vote, or deed, or writing. *Church v. Vicksburg*, 50 Miss. 601.

Though a contract be void, if it be only free from moral turpitude, the corporation is liable for the money received thereunder. *Williams v. Bank*, 71 Miss. 858; s. c., 16 S. Rep. 238.

A corporation may deal with an individual corporation or stockholder the same as with any other person, and they may acquire adverse relations to each other. *McNamee v. Relf*, 52 Miss. 426.

A voluntary release of its securities by a corporation is void as to its creditors. *Petrie v. Wright*, 6 S. & M. 647. What constitutes fraud in such transaction. *Id.*

Where corporation has right to make contracts necessary for erection of a building, it has power to accept for payment an order by materialman, drawn by the contractor. *Lodge v. Smith*, 58 Miss. 301.

Such corporation having received benefit of contract by the erection of the building cannot avoid liability to pay for same by showing that such provision of its charter is invalid. *Id.* Plea of ultra vires must state what. *Cox v. Mach. Co.*, 57 Miss. 350.

A corporation is liable for a malicious prosecution conducted by its officers and agents. *Williams v. Ins. Co.*, 57 Miss. 759; s. c., 34 Am. Rep. 494.

But not for damages occasioned by a libelous letter written by its local agent. *Express Co. v. Fitzner*, 59 Miss. 581.

Nor for willful trespass of its employees committed in direct disobedience of orders. *Fairchild v. R. R. Co.*, 60 Miss. 931.

But it may incur liability, through its officers or agents, for a reward offered for the arrest of persons unlawfully interfering with its property or business. *Norwood v. Andrews*, 71 Miss. 641; s. c., 16 S. Rep. 262.

Essentials of recovery of damages for negligence of railroad company. *R. R. Co. v. Trotter*, 60 Miss. 442.

Release of interest in suit will make a corporation a competent witness. *Smith v. Steamboat Co.*, 1 H. 479.

Company has power to place its books in whose custody it pleases, and the books are the best evidence of acts of the corporation as between its members; but they are not admissible until proved to be the books of the company. *Id.*

After death of secretary, any member may rightfully take possession of the books, and such possession will justify their introduction in evidence as the books of the company. *Id.*

§ 837. In all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote, in person or by proxy, the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares, so as to give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall see fit; and such directors or managers shall not be elected in any other manner; but a person who is engaged or interested in a competing business, either individually or as employee or stockholder, shall not serve on any board of directors of any corporation without the

## Power to hold property; bonds; stockholders — Code, §§ 838-844.

consent of a majority in interest of the stockholders thereof.

See Const., art. VII, § 194.

§ 838. (As amended by Laws 1897, chap. 14; approved May 15, 1897.) Every corporation created under this chapter may hold real and personal estate necessary and proper for its purposes, not exceeding two hundred and fifty thousand dollars, manufacturing companies and banks excepted, which may purchase and hold property to the amount of one million dollars. And a corporation shall not have a trust, use or benefit in property held in the name of any other person for its use, either expressly or secretly, to a greater amount than it may lawfully hold, nor shall any corporation employ its capital, money, or other thing in any other way than in the pursuit of its legitimate business; and a corporation offending against any of these provisions shall forfeit its charter, and shall also forfeit all property, real and personal, above the amount it may lawfully hold, to the State; but anything herein contained shall not prevent a corporation from taking a lien on property, real or personal, to a greater amount than it may hold, as a security for a debt, or from taking property to a greater amount than it may hold in payment of a debt, if the same shall not be held for a longer period than five years; Provided Nothing herein contained shall prevent any individual now owning lands and personal property in this State, of greater value than \$250,000, conveying the same within the next twelve months to any planting and mercantile corporation, to be hereafter formed, in the bona fide payment of subscriptions to the capital stock of such corporation; but such corporation shall not subsequently thereto acquire and hold (real property at all nor personal) property to a greater amount than \$250,000 above the value of that so paid for subscriptions as aforesaid, save (real and personal property acquired and held) in the manner and for the time above provided.

§ 839. A mortgage or deed of trust conveying the franchise or income or future earnings of any corporation, no matter when or how such corporation was created, shall not be valid against debts contracted in carrying on the business of the corporation.

[Mortgage by railroad company of after-acquired property. *M. V. Co. v. R. R. Co.*, 58 Miss. 896.]

§ 840. Any corporation doing business in this State shall be liable to a penalty of two hundred and fifty dollars for every unlawful interference with the social, civil, or political rights of any of its agents or employes, and the same may be recovered by suit, to be brought by the injured party.

See Const., art. VII, § 191.

§ 841. It shall not be a defense to any suit against a corporation that there was a defect or informality in its organization.

[A corporation must, under a general issue, prove its corporate character. *Carmichael v. Trustees*, 3 H. 84. Plea nul tiel corporation bad, when. *Id.* Good, when. *Banking Co. v. Washington*, 1 S. & M. 536. Charter and proof of user under it, sufficient to prove corporate character. *Henderson v. Bank*, 6 S. & M. 314.]

§ 842. Any corporation, under the signature of its president, or other authorized officer, agent, or attorney, may execute, without affixing the corporate seal, all bonds which shall be necessary at the commencement or during the progress of any case to a final determination, and such bonds shall be binding on the corporation.

See § 58.

§ 843. Every corporation may sue any subscriber for stock therein for calls or installments that may remain due, or his stock may be sold for such calls or installments in the manner prescribed in the by-laws; and if a mode be not prescribed therein for the sale of stock, then the same may be sold, by resolution of the board of directors, by any person who may be authorized by such resolution, to the highest bidder, on three weeks' notice, published in some convenient newspaper; but the subscriber whose stock may be sold shall nevertheless be liable for any deficiency of the sale under the amount due on the stock. The amount received shall be placed to the credit of the stock sold and inure to the benefit of the purchaser, who, by such purchase, shall become a stockholder in the place of the original subscriber.

Subscription to stock need not be proved, when. § 1799. Subscription must be paid in cash. § 850.

[Calls made by directors, under authority of the by-laws, is binding without assent of each individual subscriber. *Smith v. Steamboat Co.*, 1 H. 479.

Subscription paper for stock is legal evidence, and when it contains an absolute promise to pay money, an action may be maintained on it. *Id.* When charter provides for a forfeiture and sale of stock of delinquent stockholders, the remedy is merely cumulative—the company may also sue delinquent stockholders. *Freeman v. Winchester*, 10 S. & M. 577.

Where payment of certain amount at time of subscription is not required by charter, but is required by the agreement of subscription, failure to make such payment does not vitiate the subscription. *Mfg. Co. v. Seaman*, 53 Miss. 655.

As to what constitutes a subscription to stock, see *Kruger v. Bank*, 72 Miss. 462; s. c., 16 S. Rep. 351.]

§ 844. (As amended January 18, 1894.) In all corporations each stockholder shall be individually liable for the debts of the corporation contracted during his ownership of stock for the amount of balance that may remain due or unpaid for the stock sub-



## Stockholders' liability; sale of franchise — Code, § 845.

scribed for him, and may be sued by any creditor of the corporation; and such liability shall continue for one year after the sale or transfer of the stock. The stock in all corporations shall be transferable by the indorsement and delivery of the stock certificate and the registry of such transfer in the books of the corporation.

Fictitious increase or issue of stock is void. Const., art. VII, § 196; Code, § 850. Debts must not exceed capital stock. § 853.

[See *Bank v. Pinson*, 58 Miss. 421.

If authorized by charter, railroad company may take subscriptions for stock subject to condition that they shall not be collected until wanted to pay for work on the road. *Roberts v. R. R. Co.*, 3 G. 373.

Where charter requires a certain percentage to be paid by each subscriber, at time of subscription, such payment is essential to make the subscription void. *Hayne v. Beauchamp*, 5 S. & M. 515.

Payment of subscription by a third person will be good, though made without the knowledge of subscriber, if he afterward assents to it. Knowledge of such payment without objection by subscriber is a ratification. *R. R. Co. v. Harris*, 7 G. 17; *Fiser v. R. R. Co.*, 3 id. 339.

And the payment need not be contemporaneous with the act of subscription, and may be made before subscription. *Barrington v. R. R. Co.*, 3 G. 370.

In making a contract of subscription, there is no power to waive a right of the corporation laid down in the act of incorporation. *Ellison v. R. R. Co.*, 7 G. 572.

Subscription for stock taken by a person having no authority is not essentially void, if, in a reasonable time thereafter, corporation ratifies the act. A suit to enforce subscription by the corporation is a ratification. *Walker v. R. R. Co.*, 5 G. 245.

A false and exaggerated statement by agents as to assets and ability of company to carry out its enterprise are mere expressions of opinion in reference to matters open to investigation of both parties, and subscriber has no right to rely on them, and they will be no ground for avoiding contract of subscription. *Walker v. R. R. Co.*, 5 G. 245.

When subscriber can avoid his contract on ground that agent who obtained it influenced him by exhibiting a subscription of an influential person which was colorable only. *Id.*

A subscriber to stock, being sued by a creditor of the corporation, cannot set up such fraud as a defense. *Saffold v. Barnes*, 10 G. 399.

Nor can he set up any secret agreement between him and such agent by which he was to be released from his subscription and in case certain conditions promised by the agent were not complied with. *Id.*

False representations of agent of a corporation will not avoid a subscription to stock, when. *R. R. Co. v. Anderson*, 51 Miss. 829; *Mfg. Co. v. Seaman*, 53 id. 655.

Above section has no application to transactions which took place before Code went into effect. It is not retroactive. *Goyer v. Wilderberger*, 71 Miss. 438; s. c., 15 S. Rep. 235.

Provision that "all stock shall be transferable only on the books of the company" has no relation to the purchasers and creditors, but pertains only to the relation between shareholders and the company. *Clark v. Bank*, 61 Miss. 611.

The bona fide assignment of certificates of stock entitles the assignee to have the transfer made upon the books of the company to his name. And this right is not affected by an attachment of the stock or by creditors of the assignee before such transfer has been made. *Clark v. Bank*, 61 Miss. 611.

By-laws of a corporation requiring transfer of stock to be noted on its books are for the benefit

of the corporation only. *Goyer v. Wilderberger*, 71 Miss. 438; s. c., 15 S. Rep. 235.

In a proceeding by creditors to enforce liability of shareholders of insolvent corporation all solvent stockholders within jurisdiction must be joined, unless excused on an allegation that the number is too great. *Vick v. Lane*, 56 Miss. 681.

Liability established by the Code between delinquent shareholders and judgment creditors of a corporation is not a joint, but a several, liability. *Id.* The statutes seem to contemplate enforcement of this liability by action at law, though circumstances might justify a resort to chancery. *Id.*

In a creditor's bill against stockholders it is necessary to make corporation a party, if it be not dissolved, or entirely without assets. *Perkins v. Sanders*, 56 Miss. 733.

When stockholders treated as partners. *Id.*

One stockholder may be compelled to pay company's whole indebtedness. But in settling equities between stockholders, each should be made to contribute proportionately. If any be insolvent, the solvent must bear the whole burden. If complainant be a stockholder, he must contribute his share to his own debt, and to all others who are established. *Id.*

Liability of stockholder for a debt of the corporation contracted during his ownership of stock is not discharged by a release executed by the corporation when solvent. *Vick v. La Rochelle*, 57 Miss. 602.

Subscriber for stock, being garnished by creditor of company, cannot set up that company had never been legally incorporated. *Saffold v. Barnes*, 10 G. 399.

Effect of consolidation of railroad companies on debts and liabilities. *M. V. Co. v. R. R. Co.*, 58 Miss. 846.

To effect forfeiture of stock there must be an actual declaration of forfeiture. Declaration of intention to forfeit not sufficient. *Mfg. Co. v. Seaman*, 53 Miss. 655.

Unless otherwise stipulated, a transfer of stock carries with it a dividend afterward declared, no matter when it was earned. *Timberlake v. Compress Co.*, 72 Miss. 323; s. c., 16 S. Rep. 530.

And one who takes a certificate of stock as collateral security, and afterward, without notice of a previous assignment of an undeclared dividend, purchases the stock in settlement of the debt, is entitled to dividends. *Id.*

Under above section the year does not begin until a transfer in the manner provided, viz., by indorsement and delivery of the stock certificate and registry of the transfer on the corporate books. *Kruger v. Bank*, 72 Miss. 462; s. c., 16 S. Rep. 351.

Under above section, a corporate creditor may recover the amount of unpaid subscription of a stockholder, though he has given a note to the corporation for the same, payable on calls, and, having died before payment, the note has not been probated against his estate as required by the Code. *Robinet v. Starling*, 72 Miss. 652; s. c., 18 S. Rep. 421.]

§ 845. When judgment shall be rendered against any corporation, all its property, real and personal, and its franchise shall be liable to be seized and sold in satisfaction thereof; and the sale shall vest the title to the franchise in the purchaser, with all privileges and immunities; and the officer making the sale shall immediately put him in possession; and the purchaser may recover any penalties imposed for injuries to the franchise, and shall also discharge all the duties imposed by the charter on the corporate body, and be liable to like penalties as the original stockholders which may accrue after his purchase of the franchise.

Rolling stock liable to execution. Const., art. VII, § 185.



## Dissolution; continuance; foreign corporations — Code, §§ 846-852.

[President of a bank may contract for the entry of a remittitur of a judgment in favor of the bank. *Case v. Hawkins*, 53 Miss. 702.]

A corporation cannot defeat the right of its creditors to sell the equity of redemption by executing a deed of trust with long time to run, etc.; it would be in violation of this section. *R. R. Co. v. McCutchen*, 52 Miss. 645.

An assignment by an insolvent corporation preferring debts due stockholders and directors is fraudulent. *Love Mfg. Co. v. Queen City Mfg. Co.*, 20 S. Rep. 146.]

§ 846. Those persons who were stockholders at the time of the sale of the franchise of a corporation may redeem the franchise which has been sold under execution, at any time within six months from the date of sale, by paying or tendering to the purchaser the amount paid by him, with ten per centum thereon; but shall not be entitled to any allowance for the profits received by the purchaser in the meantime.

§ 847. On the dissolution of any corporation, either by judgment or otherwise, all its real and personal estate shall be vested in the stockholders therein, in their respective proportions, who shall hold the same as tenants in common; but this section shall not extend to any property except that which the corporation might lawfully have held without forfeiting the same to the State. Debts due to and from the corporation shall not be extinguished by its dissolution, but shall be a charge upon its property.

[Above section does not deprive a corporation of its right, in good faith, to dispose of its property, or create such a trust as affects this right when exercised in good faith. *Sells v. Grocery Co.*, 72 Miss. 590; s. c., 17 S. Rep. 236.]

§ 848. A corporation, after its charter has expired or been annulled, may nevertheless be continued as a body corporate for the term of three years thereafter, for the purpose of suing and being sued and of enabling it to close up its concerns, to sell and convey property, and to divide the assets, but not for the purpose of enabling it to carry on other corporate business. This provision, however, shall not extend to cases in which it may be necessary to appoint trustees on judgment of dissolution.

[After expiration of time for which a corporation has been chartered it ceases to exist for any purpose, and suits by it abate. *Bank v. Wrenn*, 3 S. & M. 791.]

Where there is no statute to the contrary, upon dissolution of a corporation debts due to or from it are extinguished. *Port Gibson v. Moore*, 13 S. & M. 157.]

§ 849. Corporations which exist by the laws of any other State of the Union, by the acts of congress, or the laws of any foreign country, may sue in this State by their corporate names, and they shall also be liable to be sued or proceeded against, by attachment or otherwise, as individual non-resident debtors may be sued or pro-

ceeded against. And the acts of the agents of any such foreign corporation shall have the same force and validity as the acts of agents of private persons; but such foreign corporations shall not do or commit any act in this State contrary to the laws or policy thereof, and shall not be allowed to recover on any contract made in violation of law or public policy.

Foreign corporations cannot build railroads within the State. Const., art. VII, § 197. Indictment of foreign corporation. § 1369.

[Corporations must dwell in the place of their creation and cannot migrate to another State, but they are liable to be sued, like natural persons, in transitory actions, arising ex contractu or ex delicto in any State where legal service of process may be had. *R. R. Co. v. Wallace*, 50 Miss. 244. Where corporation appears and pleads, it cannot be to the jurisdiction. Id.]

Foreign corporations may, by comity, make contracts and establish agencies in other states, unless excluded from so doing, or unless against the policy or interest of the state. *Williams v. Creswell*, 51 Miss. 817. Foreign corporations recognized in this State. Id.]

Mere fact that a foreign corporation executing notes in this State making them payable in Tennessee does not render them void. *Williams v. Bank*, 71 Miss. 858; s. c., 16 S. Rep. 238.

Requisites of service of process on foreign express companies. *Express Co. v. Hunt*, 54 Miss. 664. Return of service on foreign insurance company, defective, when. *Ins. Co. v. Mansfield*, 45 Miss. 311.

Under above section, a non-resident plaintiff may sue a foreign corporation for injuries inflicted in another State. *Pulman Palace-Car. Co. v. Lawrence*, 22 S. Rep. 53.]

§ 850. A note, obligation, or security of any kind given or transferred by any subscriber for stock in any corporation shall not be considered, taken, or held as payment of any part of the capital stock of the company.

Fictitious issue or increase of stock. Const., art. VII, § 196.

[Promoters of a corporation procuring subscriptions by false representations as to cost of patent right transferred by them to the corporation, held liable to the corporation for profits made. *Cook v. Southern Columbian Climber Co.*, 21 S. Rep. 795.]

§ 851. A loan of money shall not be made by a corporation to any stockholder therein; and in case such loan be made, the officers who make it or assent thereto shall be jointly and severally liable for the amount thereof, and interest, to creditors whose debts were contracted before the repayment of the money by the borrower; but banks and building and loan associations may loan money to their stockholders. But a bank of deposit shall not loan a sum greater than one-fifth of its capital to any one person or firm.

§ 852. No part of the capital stock in any corporation shall be withdrawn or diverted from its purpose, nor a dividend declared,

when the company is insolvent, or would be rendered insolvent by such withdrawal or the payment of such dividend; and the directors who assented to such withdrawal, or declared and paid such dividend, as well as the stockholders who received it, shall be jointly and severally liable to creditors whose debts then existed, to the extent of such withdrawal or dividend and interest.

[An insolvent corporation may prefer creditors by mortgage, sale or assignment, where there is no fraud. *Sells v. Grocery Co.*, 72 Miss. 590; s. c., 17 S. Rep. 236.]

§ 853. The amount of debts which any manufacturing or trading corporation or company may contract or owe shall not exceed the amount of its capital stock paid in; and, in case the debts exceed that amount, the directors who contracted such debts shall be individually liable for the excess over the amount of capital stock, and may be sued therefor by any creditor, whether the debt be due at the time of suit brought or not, if such creditor were without notice or knowledge of the excess at the time his debt was made.

Individual liability of stockholders. § 844.

[Above section does not affect the validity of debts contracted in excess of the capital stock, or of conveyances by the corporation to secure them. *Sells v. Grocery Co.*, 72 Miss. 590; s. c., 17 S. Rep. 236.]

§ 860. The provision of this chapter, when not limited by their terms, shall apply to all corporations whatever, where the subject-matter is not elsewhere prescribed.

## CHAPTER XXX.

### Criminal Procedure.

Sec. 1367. Process on indictments; against corporations, etc.

1368. Summons to other counties for corporations.

1369. If corporation cannot be found, etc.

1370. Like proceedings before justice of the peace.

§ 1367. When an indictment shall be found against a corporation, a summons shall be issued against it, by its corporate name, to appear and answer the indictment, which summons may be executed as a summons against a corporation in a civil suit; and upon the summons being returned executed, the corporation shall be considered in court, and appearing to the indictment, and the court shall, unless the defendant do so of its own accord, cause an appearance for it to be entered of record; and such proceedings may then be had thereon as if the corporation had appeared and pleaded thereto; and if the corporation be convicted on the indictment, the court may pass judgment thereon, and cause process of execution to be issued against the goods and chattels, lands

and tenements of the corporation for the amount of the fine and costs which may be awarded against it, as on a judgment in a civil suit; and the sheriff shall proceed to sell the goods and chattels, and lands and tenements of the corporation on the execution as on an execution issuing against a corporation in a civil suit.

Service of summons. § 3433. Execution. §§ 845, 3467.

§ 1368. If the summons be returned not executed, and the officer shall make affidavit that he hath made diligent inquiry and cannot ascertain any place of business of the corporation in the county, or the name of any officer of the corporation, resident in the county in which such indictment shall have been found, upon whom the summons could be executed, then the court shall make an order directing a summons to issue to any other county of the State in which the defendant corporation may be served, or the summons may be issued in the first instance without a precedent order of court, and its service shall be as effectual as if served in the county where the indictment is found.

§ 1369. If it be made known to the court, by affidavit of any credible person, as required in suits in chancery against non-residents, that the defendant corporation is non-resident, or cannot be found in this State, it shall order said corporation to cause its appearance to be entered, and to plead to the indictment, on or before the first day of the next term of the court, a copy of which order shall, within thirty days, be forwarded by mail to the corporation, postage paid, by the clerk of the court, if the post-office address be made known by the affidavit; and it shall also be published for three weeks in one of the public newspapers printed in this State, as the court may direct; and, if the corporation shall not appear within the time limited by such order, or within such further time as the court shall appoint, then, on due proof of the mailing and publication, or of the publication, the court shall order the clerk to enter an appearance and plea of not guilty for said corporation, and, thereupon, further proceedings may be had on such indictment as if the corporation had appeared and pleaded thereto; and, in case of conviction, execution may be issued and proceedings had thereon as in the preceding section mentioned.

Foreign corporations. § 849.

§ 1370. Like process and proceedings may be had before justices of the peace in a prosecution or proceeding against a corporation for any offense cognizable before a justice of the peace; and in case publication be necessary, the day of appearance may be fixed for such time as will allow the order to be published for the required period.

Evidence; service of process — Code, §§ 1799, 2437, 3433, 3467.

## CHAPTER XLIII.

### Evidence.

Sec. 1799. When subscription of stock need not be proved.

§ 1799. In suits by any corporation to recover an installment or call upon the capital stock subscribed by any person, it shall not be necessary for the corporation to prove that the subscription was made, or that the installment or call was required to be paid, or that publication thereof was made, if the same be distinctly averred in the pleading, unless the defendant shall specially deny the same by plea verified by oath.

Suits by corporation against subscribers, for calls. § 843.

[Act of legislature which dispenses with proof of subscription unless subscription be denied under oath is constitutional. *Thigpen v. R. R. Co.*, 3 G. 348.]

## CHAPTER LXX.

### Land and Conveyances.

Sec. 2437. Corporations may convey land.

§ 2437. All bodies politic or corporate may convey their lands by and under the corporate seal and the signature of an officer; and such officer signing the same may acknowledge the execution of the deed, or proof thereof may be made as in other cases.

Restriction upon holding lands. Const., art. IV.  
§ 84. Limits of value of corporate property. § 838.

[Private corporation may convey personal property without seal. *Lumber Co. v. Cain*, 70 Miss. 628; s. c., 13 S. Rep. 239.

There is no public policy making a distinction between the rights of foreign and domestic corporations as to ownership of lands in this State. Nor does comity require such distinction. *Taylor v. Trust Co.*, 71 Miss. 694; s. c., 15 S. Rep. 121.

Creditors cannot avoid conveyances by a corporation on the ground that they were not executed by the proper officers, if they are ratified by the directors and the stockholders do not complain. *Sells v. Grocery Co.*, 72 Miss. 590; s. c., 17 S. Rep. 236.]

## CHAPTER CIX.

### Process.

Sec. 3433. How served and effect of, when corporation a defendant.

3467. Executions and attachments; how levied on corporate stock.

§ 3433. (As amended February 2, 1894.) If the defendant in any suit or legal proceeding be a corporation, process may be served on the president or other head of the corporation, upon the cashier, secretary, treasurer, clerk or agent of the corporation, or upon any one of the directors of such corporation; or if the corporation be a sleeping-car company, upon a conductor thereof; or if a steamboat company, upon the captain or other officer of a boat thereof. If no such person or persons be found in the county, then it shall be

sufficient to post a true copy of the process on the door of the office or principal place of business of the corporation. In suits against railroads, sleeping-car, telegraph, telephone, express, steamboat and insurance companies or corporations, or in suits against a receiver or receivers in charge of the property of any such companies or corporations, the process may be served on any agent of the defendant or sent to any county in which the office or principal place of business may be located, and there served as herein directed and authorized; or may be served on any one of the foregoing officers of such corporation or company, and upon the secretary, cashier, treasurer, clerk, depot agent, attorney or any other officer or agent of such receiver or receivers, or upon them in person. When any writ or process against such corporation, company, receiver or receivers has been returned executed, the defendant or defendants shall be considered in court, and the action shall proceed as actions against natural persons; and all process and notices to be served upon such companies, corporations or receivers, may be served as herein directed.

Corporation may sue and be sued. § 836, and note. Criminal procedure. §§ 1367-1370.

[Return of service on foreign insurance company defective, when. *Ins. Co. v. Mansfield*, 45 Miss. 311.

What summons should contain. 1d. Requisites of a valid judgment by default. 1d.

Requisites of service of process on foreign express companies. *Express Co. v. Hunt*, 54 Miss. 664.]

§ 3467. In case of the levy of an execution or attachment on the stock, shares, or interest of the defendant in any corporation or joint-stock company, the officer shall go to the office or principal place of business of the corporation or company, and there declare that he attaches or levies upon the stock, shares, or interest of the defendant therein at the suit of the plaintiff; and he shall demand of any officer, agent, or clerk of such corporation or company there present, and who is not the defendant, a statement in writing, under oath, of the amount of the defendant's stock, the number of his shares, or extent of his interest in such corporation or company, and shall leave with the officer, agent, or clerk, a copy of the writ; but if no such officer, agent, or clerk be present, he shall post conspicuously at such office or place of business a copy of the writ, with a statement therewith that he has attached or levied upon the stock, shares, or interest of the defendant at the suit of the plaintiff, and that he demands of the corporation or company the statement, under oath, of the defendant's stock, share or interest therein. The stock, shares, and interest of the defendant in the corporation or company, including all dividends that may accrue after such levy, shall be bound by



the lien of the execution or attachment. The corporation or company shall, within a reasonable time, not longer than ten days after the levy, deliver to the officer a statement in writing, under oath, of the particulars demanded by the officer, and of the value of the defendant's stock, shares, or interest; and in case the corporation or company shall neglect or refuse to do so, shall willfully make any false statement thereof, such corporation or company shall be liable to the plaintiff for the full amount of the judgment or decree, or of such judgment as the plaintiff shall recover if the process be an attachment; but the failure of the corporation or company to make such statement shall not affect the right of the officer to sell the stock, shares, or interest of the defendant.

## CHAPTER CXI.

### Quo Warranto.

- Sec. 3520. To what cases applicable.  
 3521. Proceedings; how and where.  
 3523. Form of information against corporation.  
 3529. Judgments against defendants.  
 3532. Trustees to be appointed.  
 3533. Bond of trustees.  
 3534. Property surrendered to trustees.  
 3535. Trustees to return inventory to chancery court; vacancies filled; new bonds, etc.  
 3536. Sales of property; proceedings; trustees not to buy.  
 3537. Claims presented and audited; notice.  
 3538. Compensation of trustees and others.  
 3539. Report of trustees, and order of paying debts.

§ 3520. The remedy by information in the nature of a quo warranto shall lie, in the name of the State, against any person or corporation offending in the following cases, viz.:

Third. Whenever any two or more persons shall act as a corporation, or assume so to do without being legally incorporated.

Fourth. Whenever any corporation shall be guilty of a misuser or abuse of its powers, or ceases to discharge the duty for which it was created.

Fifth. Whenever any corporation willfully exercises powers not conferred by law.

Sixth. Whenever any corporation fails to exercise powers conferred by law and essential to its corporate existence, or implied in its duty to the public.

Seventh. Whenever any corporation shall be guilty of doing or neglecting to do any act the doing or neglecting of which is made by law a cause of forfeiture of franchise.

Eighth. Whenever any corporation shall willfully and persistently violate the law made for regulating such corporations, or the criminal law; but acts done in good faith before adjudication of the constitutionality of a doubtful statute shall not be cause of forfeiture.

Ninth. Whenever it is sought to have the right of any corporation, not created by the

laws of this State, to do business in this State forfeited because of its persistent refusal to comply with the laws thereof.

Tenth. Whenever any non-resident alien or corporation shall acquire or hold lands contrary to law.

[In a proceeding by quo warranto against a corporation in its corporate name and character, the regularity of its original organization cannot be inquired into; its existence as a corporation is admitted by the proceedings. *Bank v. State*, 6 S. & M. 599; *State v. Bank*, 4 G. 474.

Failure of a corporation to meet according to its fundamental rules does not necessarily work its dissolution. *Smith v. Steamboat Co.*, 1 H. 479. Nor does a failure to elect its officers at stated times, since the old officers held until their successors are elected. *Id.* But when charter requires an election of the directory annually, a failure to elect for five years is a cause of forfeiture of charter. *State v. Bank*, 4 G. 474.

It is a condition annexed to every private corporation, that it may lose its franchises by a misuser or non-user of them. *Bank v. State*, 4 S. & M. 439. Every suspension of the use of franchise for a limited time is not a non-user, but reasonable allowance must be made for peculiar exigencies. *Id.* But a continued suspension of franchise will amount to a non-user and be ground for forfeiture. *Id.*; *State v. Bank*, 4 G. 474. Non-user does not per se work a dissolution; it is only a cause, and until judgment of dissolution on quo warranto is pronounced, the corporation must be still regarded as in existence. *Bohannon v. Blinn*, 2 G. 355.

It is not within power of legislature to revive extinguished rights, and authorize their enforcement. But it is competent for it to revive a corporation, which has expired by limitation, for purpose of collecting and distributing assets. *Bank v. Duncan*, 56 Miss. 166, 172.

Appointment of a receiver of a corporation, on its ex parte application, though the corporation is insolvent, is void, and the decree therefor, as well as all steps by the receiver thereunder, are subject to assaillment collaterally, and may be disregarded. And this, although on receiver's application, a decree has been rendered enjoining all persons from suing the corporation. *Whitney v. Bank*, 71 Miss. 1009; s. c., 15 S. Rep. 33.]

§ 3521. The proceedings in such cases shall be by information in the name of the State, by the attorney-general or a district attorney, on his own motion or on relation of another, \* \* \*. The information shall be filed in the circuit court of the county of the residence of the defendant; or, in case of an officer, where he acts as such; or, in case of a corporation or pretended corporation, where its principal office or place of business may be or where it may transact any business and has an agent; or, in case of an alien or corporation acquiring or holding land contrary to law, where any of the land is situated.

§ 3523. For convenience and certainty the information, if against a corporation, shall set out briefly the causes of forfeiture. It may be in the form following, to-wit:

" STATE OF MISSISSIPPI, }	Circuit Court,
" County of ....., }	..... Term,
	A. D. ....

" The State of Mississippi, by A. B., district attorney for the ..... judicial district of the State, of his own accord (or on

the relation of C. D., as the case may be) gives the court here to understand and be informed that the corporation of . . . . . has forfeited all right to exercise any of the franchises and privileges granted it in this, to-wit: (set out the causes of forfeiture).

"Wherefore the State of Mississippi, by said district attorney, prays judgment of forfeiture and ouster against said corporation."

§ 3529. If it be found on the trial of an information that a corporation has forfeited its charter, judgment of ouster from the franchises shall be given, and that it be dissolved; and if it be found, on trial, that persons claiming to exercise a franchise are not entitled to the same, the judgment shall be that such persons be debarred and excluded from the use of the franchise; and in both cases the State shall recover costs.

\* \* \*

§ 3532. When judgment of forfeiture and ouster shall be rendered against any corporation or against any person pretending to exercise corporate franchises, the debtors to such corporation or other body, shall not be thereby released from their debts and liabilities, and it shall be the duty of the judge of the court rendering the judgment to appoint one or more trustees to take charge of the books, evidences of debt, assets, and property of such corporation or body pretending to exercise corporate franchises; and such trustees are invested with full power and authority to sue for in their own name, and to collect, all debts due to such corporation or body pretending to exercise corporate franchises; and generally to maintain any action, or to revive or have revived against them any suit or judgment for or against such corporation or other body. And the proceeds of debts collected and property sold shall be applied by such trustees to the payment of the costs in the quo warranto proceedings and in payment of debts, under the direction of the court.

§ 3533. Before they enter upon the discharge of their duties, the trustees shall execute bond in such sum as may be prescribed, and with such sureties as may be approved by the judge, payable to the State, and conditioned for the faithful discharge of their duties as trustees, which bond may be put in suit for a breach thereof; and the amount collected thereon shall constitute a fund for the benefit of creditors or stockholders, as other funds of the corporation.

§ 3534. It shall be the duty of all persons having possession of property or evidences of debt belonging to any corporation, or persons pretending to exercise corporate franchises, against which or whom judgment of forfeiture shall have been rendered, to surrender and deliver the same to the trustees so appointed, and, in case of failure to do so, such trustees may maintain an action therefor.

§ 3535. It shall be the duty of the trustees, at the next succeeding term after their appointment of the chancery court of the county in which the quo warranto judgment was rendered, or at such other time as may be designated by the said chancery court or the chancellor, to return, under oath, to the court, a full and complete inventory of all evidences of debt, and property of every description, which may have come to their possession or knowledge as the property of the corporation or body pretending to exercise corporate franchises, and from time to time such further inventories as may be necessary, in case additional assets or property shall be discovered, which inventories shall be recorded by the clerk. And the chancery court, or the chancellor in vacation, may remove trustees and appoint new ones, or fill vacancies in case of death or resignation, and may require new bonds of the trustees.

§ 3536. The chancery court, or chancellor in vacation, shall order the sale of the property, real and personal, in the same manner and on the same terms as such property of intestate decedents is sold, and like proceedings shall be had as far as applicable. It shall not be lawful for a trustee to become the purchaser of any property sold by him in that capacity, or by his co-trustees, either directly or indirectly, or to act as agent of any other person in making such purchase, and all purchases in violation of this provision shall be void.

§ 3537. The chancery court shall require all claims against the funds in the hands of the trustees to be presented and audited in such manner as shall be deemed proper; and notice shall be given to all persons holding such claims to present and have them audited in the same manner as such notice is given in the administration of estates, and all claims not presented and audited within twelve months after the last publication shall be forever barred.

§ 3538. The compensation of trustees and others shall be determined by the court, and allowed out of the effects of the corporation or other body, under the control of the court.

§ 3539. It shall be the duty of the trustees, at the first term of the court after the time for presenting claims has elapsed, to make a full and complete report of all claims presented and audited, at which time exception may be taken to the allowance or rejection of any claim, and, if sustained, the report may be corrected; and when the report is settled, and the amount of indebtedness ascertained, the court shall order the trustees to pay the debts in the following order:

(a) The compensation to the trustees and others, and expenses incurred in settling the affairs of the corporation, including the payment of the costs in the quo warranto proceedings in the circuit court, and the costs in the chancery court.



(b) Debts due to the State, or any county, city, town, or village for taxes or otherwise.

(c) A ratable distribution amongst creditors who have proved their claims, and had them allowed.

(d) The surplus, if any, shall be ratably distributed among the stockholders, according to their respective rights.

## CHAPTER CXII.

### Railroads.

Sec. 3559. Fellow-servant rules.

AN ACT to amend chapter S7 of the acts of 1896, being entitled "An act to amend section 3559 of the annotated code of 1892 with reference to the liabilities of corporations to their employes," so as to make said act not apply to actions pending at the time of its passage.

Be it enacted by the legislature of the State of Mississippi, That the act of the legislature of said State, approved March 11, 1896, being entitled "An act to amend section 3559 of the annotated code of 1892, with reference to the liability of corporations to their employes," be amended so as to read as follows:

## CHAPTER S7.

AN ACT to amend section 3559 of the annotated code of 1892 with reference to the liability of corporations to their employes.

Section 1. Be it enacted by the legislature of the State of Mississippi, That section 3559 of the annotated code of 1892 be amended so that the same shall read as follows, to-wit: Every employe of any corporation shall have the same rights and remedies for an injury suffered by him from the act or omission of the corporation or its employes, as are allowed by other persons not employes, where the injury results from the negligence of a superior agent or officer, or of a person having the right to control or direct the services of the party injured; and also when the injury results from the negligence of a fellow-servant engaged in another department of labor from that of the party injured, or of a fellow-servant on another train of cars, or one engaged about a different piece of work. Knowledge by an employe injured of the defective or unsafe character or condition of any machinery, ways or appliances, or for the improper loading of cars, shall not be defense to an action for injury caused thereby, except as to conductors or engineers in charge of dangerous or unsafe cars or engines voluntarily operated by them. When death ensues from an injury to an employe an action may be brought in the name of the widow of such employe for the death of the husband, or by the husband for

the death of his wife, or by the parent for the death of a child, or in the name of the child for the death of an only parent, for such damages as may be suffered by them respectively by reason of such death, the damages to be for the use of such widow, husband or child, except that in case the widow should have children the damages shall be distributed as personal property of the husband. The legal or personal representative of the person injured shall have the same rights and remedies as are allowed by law to such representatives of other persons. In every such action the jury may give such damages as shall be fair and just with reference to the injury resulting from such death to the person suing. Any contract or agreement, expressed or implied, made by an employe to waive the benefit of this section shall be null and void; and this section shall not deprive an employe of a corporation or his legal personal representative of any right or remedy that he now has by law.

§ 2. All suits pending in any court at the time of the approval of this act, and which were also pending at the time said chapter went into effect, shall not be affected by any of its provisions; but all such suits shall be conducted and concluded under the laws in force prior to the time of the approval of said act, on March 11, 1896.

(Approved January 31, 1898.)

[Note.—Section 3559, in the Code of 1892, applied only to railroad corporations. The above amendments extend its application to all corporations.]

## CHAPTER CXVI.

### Revenue.

Sec. 3744. What property exempt from taxation.  
3750. Where banks and other companies assessed.

3758. Assessment of capital stock.

§ 3744. (As amended March 23, 1896.) The following property and no other shall be exempt from taxation, to-wit:

(v) All permanent factories or plants of the kind hereinafter named which shall hereafter be established in this State before the first day of January, 1906, shall be exempt from all State, county and municipal taxation for a period of ten years, to-wit: All permanent factories for working cotton, jute, ramie, wool, silk, furs or metals; all permanent pork packing and cold storage factories or plants, where the amount of capital invested shall not be less than ten thousand dollars; all permanent factories for manufacturing machinery, implements or articles of use in a finished state and ready for consumers' use without additional process or labor; all permanent factories for making wagons, carriages, buggies, clothing or shoes complete; all permanent factories for making barrels or boxes complete, whether coopered or loose, ready for trans-



Taxation; trusts and combines — Code, §§ 3750, 3758, 4437, 4438.

portation; all permanent additions or extensions, costing not less than ten thousand dollars, hereafter made before the first day of January, 1906, to any permanent factory or plant, hereafter established under the provisions of this act. Any exemption claimed under this act shall commence from the date of the charter if the factory or establishment be a corporation; and from the date of beginning working operations if the same be an individual enterprise. Any factory which has been abandoned for not less than three years and commencing operations within two years from November the first, 1896, shall be entitled to such exemption. A corporation or person claiming exemption under this paragraph (v) shall apply in writing to the auditor of public accounts, giving full information as to the property proposed to be exempted, the kind of articles to be manufactured; and the auditor, with the written advice of the attorney-general shall determine whether the property is exempt. The auditor shall notify the assessor of the county or municipality, in writing, of his decision in the premises, stating the property to be exempted, and the date when the exemption begins and ends. A factory or manufactures belonging to or being a trust, combine or pool, shall not enjoy exemption from taxation. All creameries established in this State within two years last passed from April the first, 1896, and all those which shall be established hereafter before January the first, 1906, shall be exempt from all taxation for ten years, under the terms and conditions of this act.

Legislature may provide for special mode of assessment. Const., art. IV, § 112. Corporations to be taxed. Const., art. VII, § 181. Power to tax never to be abridged. Const., art. VII, § 182.

§ 3750. All banks and other companies and corporations shall be assessed in the county in which the principal office or place of transacting business is situated; and if there shall be no such principal office or place of business, then in the county or counties in which the business of the bank, corporation, or company shall be carried on.

See Const., art. IV, § 112; art. VII, §§ 181, 182.

[In assessing a corporation for former years in which it escaped taxation, the market value, not the par value of the capital stock is controlling; accrued profits, the franchise, real and personal property, and other factors affecting the value of the stock are to be construed. The assessment being made nunc pro tunc, the subject and the burden are to be considered just as they would have been had the assessment been made at the proper time. *State v. Simmons*, 70 Miss. 485; s. c., 12 S. Rep. 477.

Under our statutes domestic corporation is taxable with value of its capital stock, and individuals are not taxed on shares of stock held by them. *Id.*

Any legislation, by charter or otherwise, which exempts property of a corporation for profit is unconstitutional. *Mills v. Cook*, 56 Miss. 40, 53.]

§ 3758. The president or other officer of any joint-stock company or corporation the capital stock of which is taxable, other than banks and railroads, shall, on demand, on or before the first day of June in every year, deliver to the assessor of the county in which the company or corporation is domiciled or located a written statement, under oath, of the capital stock paid in, and its market value, and to whom each share belongs; and, on failure to furnish such statement, the tax shall be assessed on the whole capital authorized by the charter.

[Section construed. *Bank v. Oxford*, 70 Miss. 504; s. c., 12 S. Rep. 203.]

## CHAPTER CXL.

### Trusts and Combines.

Sec. 4437. Trust defined; criminal conspiracy.

4438. Contracts void.

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4440. Actions against, for damages.

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§ 4437. A trust and combine is a combination, contract, understanding, or agreement, express or implied, between two or more persons, corporations, or firms or associations of persons, or between one or more of either with one or more of the others:

- (a) In restraint of trade;
- (b) To limit, increase, or reduce the price of a commodity;
- (c) To limit, increase, or reduce the production or output of a commodity;
- (d) Intended to hinder competition in the production, importation, manufacture, transportation, sale, or purchase of a commodity;
- (e) To engross or forestall a commodity;
- (f) To issue, own, or hold the certificates of stock of any trust or combine;
- (g) To place the control, to any extent, of business or of the product or earnings thereof, in the power of trustees, by whatever name called;
- (h) By which any other person than themselves, their proper officers, agents, and employes shall, or shall have the power to dictate or control the management of business; or
- (i) To unite or pool interests in the importation, manufacture, production, transportation, or price of a commodity;

And is inimical to the public welfare, unlawful, and a criminal conspiracy. But this shall not apply to the associations of those engaged in husbandry in their dealings with commodities in the hands of the producers, nor to the societies of artisans, employes, and laborers formed for the benefit and protection of their members.

§ 4438. Every contract or agreement to enter into or pursue any trust and combine, and every contract or agreement made by another with any trust and combine, or with any member of a trust and combine, for any

purpose relative to the business of such trust and combine, is void, and cannot be enforced in any court.

§ 4439. (As amended January 31, 1898.)

Every corporation which shall enter to, be concerned in, or share the profit or loss of any trust and combine, shall forfeit its charter and franchise, and if a foreign corporation, shall forfeit its right to do business in this State. It is hereby made the duty of the attorney-general of this State to enforce this provision by due process of law, and any person or persons who shall violate any of the provisions of section 4437 of said chapter 140 as principal, director, manager, agent, or in any other capacity, shall, upon conviction thereof, in addition to the penalties now prescribed by law, be punished by a fine of not less than one hundred nor more than five thousand dollars, or by imprisonment in the county jail not less than three nor more than twelve months, or by both such fine and imprisonment. It shall be the duty of the several circuit judges of this State to specially call the attention of the grand juries of their respective districts to this provision.

§ 4440. (As amended by L. 1896, chap. 89.)

The producer and owner of any commodity whose cost or price is affected by any unlawful trust or combine, may recover the sum of five hundred dollars and all actual damages, and he may maintain his action therefor against one or more of the parties to the trust or combine, their attorneys, officers or agents, and that whether or not all the parties to the trust and combine be known, or whether or not the trust and combine were made or shall exist in this State. This remedy is also extended and granted to any person whose cost or price of service is affected or who in any other way is injured or damaged by any unlawful

trust or combine. In all cases for the recovery of this penalty, evidence that the cost of any commodity or that the price of any service was intended to be unlawfully affected by any trust or combine shall be conclusive proof that such trust and combine did affect the cost of such commodity or the price of such service. The above penalty and damages may also be recovered by any affected or injured person from any railroad, express, telegraph, telephone or other transportation company which may be a party to any unlawful trust or combine, or which, because of any unlawful trust or combine, may refuse to transmit any message or transport any commodity from one place in this State to another.

§ 4441. If any person, corporation, firm, or association of persons shall combine with any other person, corporation, firm, or association of persons, or if either of them combine with one or more of the other to prevent, by polling, any or either of said persons, corporations, firms, or associations of persons from separately or individually bidding for the performance of a public work for the State, or any county, municipality, or levee board thereof; or if any person, corporation, firm, or association of persons shall prevent, by persuasion or reward, any other person, corporation, firm, or association of persons, or any one or more of them, from bidding for the performance of such public work, they, and each of them, shall be guilty of a misdemeanor, and shall be fined not less than twenty-five dollars nor more than one thousand dollars.

§ 4442. All sums of money to be paid on any contract on behalf of the State, or any county, municipality, or levee board thereof, when the provisions of the last section have been violated, shall not be collectible, nor shall the same be paid by any officer or board having the payment thereof.

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## SPECIAL LEGISLATIVE ACTS PASSED SUBSEQUENTLY TO 1889.



# MISSOURI.

## CONSTITUTION OF MISSOURI--1875

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE II.

##### Bill of Rights.

- Sec. 15. Laws impairing obligation of contracts, or granting irrevocable privileges, prohibited.
20. Private property not to be taken for private use.
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46. Grants of public money or property to aid corporations prohibited.
47. Municipalities cannot lend their credit to corporations, or become stockholders therein.
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51. Corporation debts, release prohibited.
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##### Revenue and Taxation.

- Sec. 2. Power to tax corporation not to be surrendered.
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3. Legislature not to remit forfeited charters.
4. Eminent domain; right of State in corporation property; trial.
5. Subject to police power of the State.
6. Election of directors.
7. Business limited by charter; power to hold real estate.
8. Issue and increase of stock or bonds.
9. Personal liability of stockholders.
10. Preferred stock, how issued.
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#### ARTICLE II.

##### Bill of Rights.

§ 15. That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be passed by the general assembly.

See art. IV, §§ 51, 53; art. XII, § 2.

[Power of legislature to tax corporations will never be considered surrendered unless it is done expressly or by necessary implication in the charter itself. *City v. Bank*, 49 Mo. 574.

Where charter is silent on subject of taxation, unless there is some contract to be impaired, where there is a consideration given, it will never be presumed that legislature divests itself of the power to tax. *City v. Ins. & Trust Co.*, 47 Mo. 150.

Statute does not impair the obligation of a contract which simply places foreign member of a corporation or creditor upon an equal footing with the creditor in this State. *In re Life Assn.*, 91 Mo. 178; s. c., 3 S. W. Rep. 833.

Where special statute authorized defendant sued by a corporation to plead in bar of suit forfeiture of charter, the repeal of that act takes away no vested rights. *Bank v. Snelling*, 35 Mo. 190.

Articles of an educational corporation held to provide for its perpetual existence. *State ex rel. v. Lesueur*, 41 S. W. Rep. 904.]

§ 20. That no private property can be taken for private use, with or without compensation, unless by the consent of the owner, except for private ways of necessity, and except for drains and ditches across the lands of others for agricultural and sanitary purposes, in such manner as may be prescribed by law; and that whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and as such judicially determined, without regard to any legislative assertion that the use is public.

See art. XXII, § 21. Eminent domain. Art. XII, § 4.

[In proceedings to condemn private property for public uses, it is the duty of the courts to determine whether or not the use is to be such, regardless of any legislative assertion on the subject. *Savannah v. Hancock*, 91 Mo. 54; s. c., 3 S. W. Rep. 215.

Extent to which private property shall be taken for public use rests wholly in the discretion, subject only to the restraint that just compensation must be made. *County Ct. v. Griswold*, 58 Mo. 175.]

§ 21. That private property shall not be taken or damaged for public use without just compensation. Such compensation shall be ascertained by a jury or board of commissioners of not less than three freeholders, in such manner as may be prescribed by law; and until the same shall be paid to the owner, or into court for the owner, the property shall not be disturbed or the proprietary rights of the owner therein divested.



Powers of general assembly; taxation — Const., Art. iv, §§ 45–47, 49, 51, 53; Art. x, §§ 2, 5, 21.

The fee of land taken for railroad tracks without consent of the owner thereof shall remain in such owner, subject to the use for which it is taken.

See art. II, § 20, and cross-references.

[The building of a railroad is a public use for which private property may be taken. *Walther v. Warner*, 25 Mo. 277.]

Legislative acts authorizing the taking of private property for public uses are unconstitutional unless they provide owner with proper remedy to obtain just compensation. *Id.* This remedy must be an efficient one. *Id.*

Legislature must fix the compensation. *County Ct. v. Griswold*, 58 Mo. 175. Payment of compensation is a condition precedent to the appropriation. *King v. Bridge Co.*, 57 Mo. 496. The compensation must be paid in money. *Daugherty v. Brown*, 91 Mo. 31; s. c., 3 S. W. Rep. 210. Or in benefits peculiar to that which is not taken, but not in such benefits as are common to the public at large. *Id.*

A corporation cannot take possession of condemned land until the damages assessed have been paid to the owner or into the court for him. *Fire Brick Co. v. Lubke*, 15 Mo. App. 152. And when so paid, corporation cannot claim that it was paid in as a pledge or as security and not as an absolute payment. *Id.*

Above provision is self-enforcing and repeals all statutes in conflict with it. *Id.*]

#### ARTICLE IV.

##### Legislative Department.

§ 45. The general assembly shall have no power to give or to lend, or to authorize the giving or lending of the credit of the State in aid of or to any person, association or corporation, whether municipal or other, or to pledge the credit of the State in any manner whatsoever, for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporation whatsoever.

See art. IV, §§ 47–49.

[A legislative act granting extension of time upon a loan formerly made to a railroad company is not in conflict with above section. Opinion of the Court, etc., 55 Mo. 497.]

§ 46. The general assembly shall have no power to make any grant, or to authorize the making of any grant of public money or thing of value to any individual, association of individuals, municipal or other corporation whatsoever: Provided, That this shall not be so construed as to prevent the grant of aid in a case of public calamity.

§ 47. The general assembly shall have no power to authorize any county, city, town or township, or other political corporation or subdivision of the State now existing, or that may be hereafter established, to lend its credit, or to grant public money or thing of value in aid of or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company.

See art. IV, §§ 45, 49.

[Legislature cannot authorize township to subscribe to railroad companies. *Webb v. Lafayette Co.*, 67 Mo. 353; *State v. Walker*, 85 Id. 45.]

§ 49. The general assembly shall have no power hereafter to subscribe or authorize the subscription of stock on behalf of the State, in any corporation or association, except for the purpose of securing loans heretofore extended to certain railroad corporations by the State.

See art. IV, §§ 45, 47.

§ 51. The general assembly shall have no power to release or extinguish, or authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual to this State, or to any county or other municipal corporation therein.

See art. II, § 15, and cross-references.

§ 53. The general assembly shall not pass any local or special law: \* \* \* Exempting property from taxation: regulating labor, trade, mining or manufacturing: creating corporations, or amending, renewing, extending or explaining the charter thereof: granting to any corporation, association or individual any special or exclusive right, privilege or immunity, or to any corporation, association or individual the right to lay down a railroad track: \* \* \* Nor shall the general assembly indirectly enact such special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed.

See art. II, § 15, and cross-references.

#### ARTICLE X.

##### Revenue and Taxation.

§ 2. The power to tax corporations and corporate property shall not be surrendered or suspended by act of the general assembly.

Property subject to taxation. § 2787. Taxation. §§ 7503–7510. Assessment of property, etc. §§ 7538–7541. Same of personal property. Act of 1891, at p. 46.

[As to taxation of corporations and of corporate stock, see *Ins. Co. v. Charles*, 47 Mo. 462; *City v. Ferry Co.*, 40 Id. 580.]

§ 5. All railroad corporations in this State, or doing business therein, shall be subject to taxation for State, county, school, municipal and other purposes, on the real and personal property owned or used by them, and on their gross earnings, their net earnings, their franchises and their capital stock.

See art. X, § 2, and cross-references.

§ 21. No corporation, company or association, other than those formed for benevolent, religious, scientific or educational purposes, shall be created or organized under the laws of this State, unless the persons named as incorporators shall, at or before the filing of the articles of association or incorporation, pay into the State treasury fifty dollars for the first fifty thousand dollars or less of capital stock, and a further sum of five

## Corporations — Const., Art xii, §§ 1-9.

dollars for every additional ten thousand dollars of its capital stock. And no such corporation, company or association shall increase its capital stock without first paying into the treasury five dollars for every ten thousand dollars of increase: Provided, That nothing contained in this section shall be construed to prohibit the general assembly from levying a further tax on the franchises of such corporation.

See §§ 2492-2493.

[Legislature cannot exempt incorporators of building associations from paying the taxes required by above section. *State v. McGrath*, 96 Mo. 193; s. c., 8 S. W. Rep. 425.]

**ARTICLE XII.****Corporations.**

**Section 1.** All existing charters, or grants of special or exclusive privileges, under which a bona fide organization shall not have taken place, and business been commenced in good faith, at the adoption of this Constitution, shall thereafter have no validity.

[Charters obtained under special legislative grants will, in case of doubt, be construed most strongly against grantees. *State v. Payne*, 129 Mo. 468; s. c., 31 S. W. Rep. 797. Policy of this State is unfavorable to unlimited duration of purely business corporations, and all doubts in corporate charters should be resolved against such intention. *Id.*]

§ 2. No corporation, after the adoption of this Constitution, shall be created by special laws; nor shall any existing charter be extended, changed or amended by special laws, except those for charitable, penal or reformatory purposes, which are under the patronage and control of the State.

See art. II, § 15, and cross-references.

§ 3. The general assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend such forfeited charter, or pass any other general or special laws for the benefit of such corporation.

§ 4. The exercise of the power and right of eminent domain shall never be so construed or abridged as to prevent the taking, by the general assembly, of the property and franchises of incorporated companies already organized, or that may be hereafter organized, and subjecting them to the public use, the same as that of individuals. The right of trial by jury shall be held inviolate in all trials of claims for compensation, when in the exercise of said right of eminent domain, any incorporated company shall be interested either for or against the exercise of said right.

See art. II, § 20, and cross-references.

[The landowner who requests the appointment of commissioners to condemn land does not thereby waive his right under above section to have his compensation assessed by a jury. *R. R. Co. v. Story*, 96 Mo. 611; s. c., 10 S. W. Rep. 203.

Above constitutional provision is self-enforcing. *Id.* In condemnation proceedings by a corporation, defendant cannot put in issue legal existence of a corporation or its right to take land. *R. R. Co. v. Almeroth*, 13 Mo. App. 91.]

§ 5. The exercise of the police power of the State shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well-being of the State.

§ 6. In all elections for directors or managers of any incorporated company, each shareholder shall have the right to cast as many votes in the aggregate as shall equal the number of shares so held by him or her in said company, multiplied by the number of directors or managers to be elected at such election; and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute such votes among two or more candidates; and such directors or managers shall not be elected in any other manner.

Right to vote. § 2848. Same, how tested. § 2486. Election of directors. § 2490. Same. § 2772. See note to § 2481.

§ 7. No corporation shall engage in business, other than that expressly authorized in its charter or the law under which it may have been or hereafter may be organized, nor shall it hold any real estate for any period longer than six years, except such as may be necessary and proper for carrying on its legitimate business.

May convey real estate. § 2399, and cross-references. Pools and trusts prohibited. Act of 1891, at p. 47. General powers of corporations. See notes to § 2508.

§ 8. No corporation shall issue stock or bonds, except for money paid, labor done or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased, except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting called for the purpose, first giving sixty days' public notice, as may be provided by law.

Preferred stock, how issued. Art. XII, § 10. Stock not to be paid by note. § 2775. Increase of capital stock. §§ 2779-2781. Same. §§ 2784-2785. Same. §§ 2499-2501. See note to § 2499.

[Constitutional permission to subscriber for stock to pay for it by labor done or property actually received, means that corporation must receive labor or property which is reasonably worth amount of money subscribed. *Garrett v. Mining Co.*, 113 Mo. 330; s. c., 20 S. W. Rep. 965. Same rule obtained in absence of statutory authority. *Id.*]

§ 9. Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable in any

amount over or above the amount of stock owned by him or her.

Const. 1865, art. VII, § 6. Stockholder liable for double amount of his stock.

Corporation may sue members. § 2516. Execution against stockholders. § 2517, and note. Suits against former stockholders. § 2519. Stockholder not liable, when. §§ 2776-2782. Opening of subscription books; liability of subscriber. § 2494, and note.

[As to double liability of stockholders, see *Miller v. Ins. Co.*, 50 Mo. 55; *Savings Inst. v. Skating Rink*, 52 id. 552; *Ochiltree v. Contracting Co.*, 54 id. 113; *Perry v. Turner*, 55 id. 418.

Under above section, a stockholder cannot be made liable to a creditor for a debt of the corporation when his stock is fully paid up. *Schricker v. Rldings*, 65 Mo. 208; *Gausen v. Buck*, 68 id. 545.

Creditor seeking to enforce payment of his debt may ignore existence of corporation and proceed against supposed stockholders as partners, if he shows that prescribed method of becoming incorporated was not complied with. *Cleaton v. Emery*, 49 Mo. App. 345.

Liability of a stockholder to a creditor for unpaid stock rests upon contract, and hence is enforceable everywhere. *Bagley v. Tyler*, 43 Mo. App. 195; *Leucke v. Tredway*, 45 id. 507.

Shares of stock issued by corporation to its stockholders at less than its par value are chargeable by creditors for difference between cash paid and said par value; stockholder is liable for balance, regardless of question of actual fraud. *Bank v. Gallaher*, 43 Mo. App. 482.

In equity action may be against several of shareholders to enforce liability of each; but at law each shareholder must be sued separately. *Leucke v. Treadway*, supra. Where such proceeding is against more than one shareholder, judgment is in proper form, if it ascertain amount due to plaintiff, and assesses same against shareholders ratably, with proviso that shareholders who are solvent must, to extent of their liability, make up the deficiencies caused by failure of those who are insolvent to respond. *Id.*

Right to maintain a suit in equity to recover unpaid balance on stock does not depend upon equitable rights but upon principles of public policy, and the letter of the Constitution and statute. *Wilson v. R. R. Co.*, 120 Mo. 45; s. c., 25 S. W. Rep. 527, 759.

A special remedy against stockholders, given by law of domicile of corporation, will not be imported into another State for purpose of applying it against a stockholder found there. *Leucke v. Treadway*, supra.

Proper proceeding, if creditor of insolvent foreign corporation desires to enforce in this State liability of shareholders on shares of corporation which have not been paid in full, is a proceeding in equity and nature of a creditor's bill. *Id.*

Where stockholders are also creditors, rights of all parties can be properly adjusted and settled only by proceedings in equity. *Boepler v. Menown*, 17 Mo. App. 447.

Stock held as collateral does not render holder liable either to the corporation or its creditors. *Savings Assn. v. Seligman*, 92 Mo. 635; s. c., 15 S. W. Rep. 630. If one is a stockholder as between himself and the corporation, he will be liable as such to corporate creditors, but otherwise not.

*Id.* Fact that person holding stock as collateral votes the same, does not necessarily create the liability. *Id.*

Date at which liability of stockholder to judgment creditor of corporation begins, is date of return of nulla bona on execution against corporation. *Coquard v. Prendergast*, 35 Mo. App. 237.

Upon return of nulla bona, on execution against corporation, liability of stockholder for amount remaining unpaid on his stock becomes a fixed personal liability which he cannot cast off by transfer of stock or subsequent acquisition of claim against corporation, or in any way, unless by establishing a bona fide indebtedness to him at time when return was made. *Id.* Evidence by defendant to show that judgment creditor purchased his demand at a discount after insolvency of corporation, was irrelevant. *Id.*

Petition by a judgment creditor of a corporation to enforce liability of stockholders, must allege that defendants' shares are unpaid and accessible; otherwise it states no cause of action. *Blanke v. Mining Co.*, 35 Mo. App. 186.

Whether proper remedy of creditors to enforce double liability of shareholder is by action at law or suit in equity, is of no consequence, where trial was by court and petition is, in all substantial requirements, a good and sufficient bill in equity. But an action at law is proper remedy. *Bagley v. Tyler*, 43 Mo. App. 195.

Where capital stock and other property of a corporation have been divided among the stockholders leaving debts unpaid, stockholders are bound to refund. *Lead Co. v. Reinhard*, 114 Mo. 218; s. c., 21 S. W. Rep. 488.

Uncalled or unpaid subscriptions are assets of corporation, and liability of stockholder therefor is direct to corporation and contingent as to creditors. Statutory liability of a stockholder is direct to creditor and corporation has no concern therewith. *Hauser v. Thompson*, 56 Mo. App. 85. Unpaid and uncalled subscriptions pass to assignee or receiver of corporation. *Id.*

Corporation cannot, as against its creditors, apply its assets in satisfaction of debts of persons whom it is under no obligation to pay, and this inhibition extends to their use in payment of private debts of its officers. *Tube Co. v. Machine Co.*, 118 Mo. 365; s. c., 22 S. W. Rep. 947.

Creditor of corporation may enforce his claim against another corporation, purchasing property of debtor pending suit, there being no actual fraud in the sale; his remedy against old stockholders or new corporation is by bill in equity. *Lead Co. v. Reinhard*, 114 Mo. 218; s. c., 21 S. W. Rep. 488.

Purchaser at execution sale under judgment in favor of creditor in such case, is only entitled to be substituted to latter's rights to extent of amount of his bid, with interest thereon. *Id.*

§ 10. No corporation shall issue preferred stock without the consent of all the stockholders.

See art. XII, § 8. Preferred stock. § 2784.

§ 11. The term "corporation," as used in this article, shall be construed to include all joint-stock companies or associations having any powers or privileges not possessed by individuals or partnerships.

See § 2480.



## REVISED STATUTES OF MISSOURI—1889.

## CHAPTER X.

## Attachment.

Sec. 540. Shares of stock subject to attachment.

§ 540. Shares of stock in any bank, association, joint-stock company or corporation, belonging to any defendant in any writ of attachment, may be attached in the same manner as the same may be levied upon under execution.

Execution, how levied. § 4925. See § 2508, subd. 2, and cross-references. Stock is personalty. § 2502.

[Interest in shares of corporate stock may be attached, although such shares stand on the books of corporation in name of another. *Tufts v. Volkening*, 122 Mo. 631; s. c., 27 S. W. Rep. 522.]

## CHAPTER XV.

## Illegal Currency.

Sec. 706. Corporations not to pass certain notes.

§ 706. No corporation within the limits of this State, money broker or exchange dealer, shall pass or receive, within the limits of this State, any bank note or other paper currency of any kind, promising or ordering the payment of money or other thing of less denomination than one dollar: Provided, That said money brokers and exchange dealers may buy, take or receive such bank notes, post notes and currency, for the purpose of sending the same out of the State.

[A corporation acts only by its agents; the act of the agents, therefore, within the scope of their authority, will bind the corporation. A violation of this act by a corporation may be pleaded in bar of a statute brought by such court. *Mattoon v. McDaniel*, 34 Mo. 138; *Bank v. Garten*, id. 119; *R. R. Co. v. Winkler*, 33 id. 354; *Bank v. Bredow*, 31 id. 523; *University v. Jordau*, 29 id. 68.]

## CHAPTER XXVI.

## Common Carriers.

Sec. 944. Liabilities of.

§ 944. Whenever any property is received by a common carrier to be transferred from one place to another, within or without this State, or when a railroad or other transportation company issues receipts or bills of lading in this State, the common carrier, railroad or transportation company issuing such

bill of lading shall be liable for any loss, damage or injury to such property, caused by its negligence or the negligence of any other common carrier, railroad or transportation company to which such property may be delivered, or over whose line such property may pass; and the common carrier, railroad or transportation company issuing any such receipt or bill of lading shall be entitled to recover, in a proper action, the amount of any loss, damage or injury it may be required to pay to the owner of such property, from the common carrier, railroad or transportation company, through whose negligence the loss, damage or injury may be sustained.

[All persons engaged in the carriage of goods for hire are common carriers. *Kirby v. Express Co.*, 2 Mo. App. 369.

A ferryman is a common carrier, and liable not only for gross negligences but for all losses, except such as are occasioned by the act of the person employing him, the act of God, or enemies of the country. *Pomeroy v. Donaldson*, 5 Mo. 36.

Carrier's liability under this chapter for negligence of connecting carrier cannot be limited by contract. *Heil v. Ry. Co.*, 16 Mo. App. 363; *Craycroft v. R. R. Co.*, 18 id. 487; *Orr v. R. R. Co.*, 21 id. 333.

Such liability does not exist when neither line is in this State. *Goldsmith v. R. R. Co.*, 12 Mo. App. 479.

To recover under this section from receiving carrier for loss beyond its terminus a contract expressed or implied to convey such terminus is necessary; and authority of local agent to make such contract will not be presumed; but authority of general agent will be presumed. *Turner v. R. R. Co.*, 20 Mo. App. 632; *Orr v. R. R. Co.*, 21 id. 333; *Grover v. Ry. Co.*, 70 Mo. 672.

Carrier may, by special contract, limit its liability. *Rice v. Ry. Co.*, 63 Mo. 314; *Ball v. Ry. Co.*, 83 id. 574; *Ry. Co. v. Cleary*, 77 id. 637.

A common carrier cannot exempt himself from the consequences of his negligence. *Read v. R. R. Co.*, 60 Mo. 199; *Rice v. Ry. Co.*, 63 id. 314; *Clark v. Ry. Co.*, 64 id. 440; *Sturgeon v. Ry. Co.*, 65 id. 569; *Dawson v. R. R. Co.*, 79 id. 296; *Tibby v. Ry. Co.*, 82 id. 292; *McFadden v. Ry. Co.*, 92 id. 343; s. c. 4 S. W. Rep. 689.

A stipulation in a contract placing a limited valuation on the property shipped shall not, in case of its loss by default of the carrier, when not made in consideration of special or reduced rates of shipment, be binding on the shipper. *McFadden v. Ry. Co.*, 92 Mo. 344; s. c., 4 S. W. Rep. 689.

Such contract, in the absence of fraud or mistake, binding, though embraced in the bill of lading or receipt only. *O'Bryan v. Kinney*, 74 Mo. 125; *Ry. Co. v. Cleary*, 77 id. 634.

A carrier may stipulate for a limitation of his responsibility so far as he is an insurer against losses by mistake or accident; but he cannot exempt himself from losses caused by a neglect of that degree of diligence which the law casts upon him or his character of bailee. *Levering v. Ins. Co.*, 42 Mo. 88. Limitation must be reasonable. *McFadden v. Ry. Co.*, 92 Mo. 344; s. c., 4 S. W. Rep. 689.]

## CHAPTER XXXIII.

## Code of Civil Procedure.

## ARTICLE IV. MANNER OF COMMENCING SUITS.

- Sec. 2017. Writ, how served on foreign corporations.  
 2022. Orders of publication.  
 2024. Publication to issue on return of non est.  
 2025. Suits against railroads terminating opposite to points in this State.  
 2026. Suits against foreign joint-stock companies.  
 2028. Publication in newspaper.  
 2029. Service of summons and petition on defendant without the State.

§ 2017. A summons shall be executed, except as otherwise provided by law, either:  
 \* \* \* Fourth. Where defendant is a corporation or joint-stock company, organized under the laws of any other State or country, and having an office or doing business in this State, by delivering a copy of the writ and petition to any officer or agent of such corporation or company in charge of any office or place of business, or if it have no office or place of business, then to any officer, agent or employee in any county where such service may be obtained, and when had in conformity with this subdivision, shall be deemed personal service against such corporation, and authorize the rendition of a general judgment against it; \* \* \*

See § 2508, subd. 2, and cross-references.

[A return of service of summons on a named person "freight solicitor" of defendant, in charge of its business office at time, is sufficient to show that person served was agent of foreign corporation defendant, under above section. *Davis v. Jacksonville Line*, 126 Mo. 69; s. c., 28 S. W. Rep. 965. Returns upon process should receive a reasonable and fair construction. Id.]

Service on agent of foreign corporation at its office in this State will authorize general judgment. *McNichol v. Reporting Agency*, 74 Mo. 457. Suits against foreign insurance corporation may be brought in any county, but service can only be had on State agent. *Gates v. Tusten*, 89 Mo. 13; s. c., 14 S. W. Rep. 827.]

§ 2022. In suits in partition, divorce, attachment, suits for the foreclosure of mortgages and deeds of trust, and for the enforcement of mechanics' liens, and all other liens against either real or personal property, and in all actions at law or in equity, which have for their immediate object the enforcement or establishment of any lawful right, claim or demand to or against any real or personal property within the jurisdiction of the court, if the plaintiff or other person for him shall allege in his petition, or at the time of filing same, or at any time thereafter shall file an affidavit stating, that part or all of the defendants are non-residents of the State, or is a corporation of another State, kingdom or country, and cannot be served in this State in the manner prescribed in this chapter, \* \* the court in which said suit is brought, or in vacation the clerk

thereof, shall make an order directed to the non-residents or absentees, notifying them of the commencement of the suit, and stating briefly the object and general nature of the petition, and, in suits in partition, describing the property sought to be partitioned, and requiring such defendant or defendants to appear on a day to be named therein and answer the petition, or that the petition will be taken as confessed. If in any case there shall not be sufficient time to make publication to the first term, the order shall be made returnable to the next term thereafter, that will allow sufficient time for such publication.

See § 2508, subd. 2, and cross-references.

[Service by publication cannot be questioned collaterally. *Brawley v. Ranney*, 67 Mo. 280; *Rumfelt v. O'Brien*, 57 id. 569; *Freeman v. Thompson*, 53 id. 183; *Lenox v. Clarke*, 52 id. 115.]

§ 2024. When, in any of the cases contained in section 2022, summons shall be issued against any defendant, and the sheriff to whom it is directed shall make return that the defendant or defendants cannot be found, the court, being first satisfied that process cannot be served, shall make an order as is required in said section.

See § 2508, subd. 2, and cross-references.

§ 2025. All railroad corporations that own or operate roads terminating opposite to any point in this State, and which have offices or places of business in this State, shall be sued in the same manner as railroad corporations chartered by this State.

See § 2508, subd. 2, and cross-references.

[Railroads coming within the provisions of this section are regarded as domestic corporations, amenable to the jurisdiction of the courts of this State by the ordinary process of summons. *McNichol v. Reporting Agency*, 74 Mo. 457; *Robb v. R. R. Co.*, 47 id. 540. But cases against such corporations are removable to the Federal courts under the act of Congress. *Beery v. R. R. Co.*, 64 Mo. 533; *Stanley v. R. R. Co.*, 62 id. 508.]

§ 2026. Two or more foreign corporations or joint-stock companies, or one or more foreign joint-stock companies or corporations and one or more domestic corporations, or one or more foreign corporations or joint-stock companies and any private person or persons, being associated together and having an office or doing business in this State, may be sued by the name in which they contract or do such business, without setting out the name of the individual joint-stock companies or corporations or persons constituting such association, and service of process in such suits may be had on such association by delivering a copy of the summons to any member of such association, or to any officer or agent of such association, or to any officer or agent of any joint-stock



Service by publication, etc.: conveyances — R. S., §§ 2028, 2029, 2399.

company or corporation forming a part of such association, who may be found in the county in which suit is brought; and the property of such association, or any individual member thereof, or of any corporation or joint-stock company forming a part of such association, may be seized on execution and sold as provided by law in other cases, and the proceeds applied in satisfaction of any judgment obtained in such suit.

See § 2508, subd. 2, and cross-references.

§ 2028. Every order against non-resident, absent or unknown defendants shall be published in some newspaper published in the county where suit is instituted, if there be a paper published there; if not, then in some paper published in this State, which the plaintiff, or his attorney of record, with the approval of the judge or clerk making the order, may designate as most likely to give notice to the person to be notified; the publication shall be for four weeks successively, published at least once a week, the last insertion to be at least fifteen days before the commencement of the term at which the defendant is required to appear.

[A newspaper defined. *Kellogg v. Carrico*, 47 Mo. 157. The order of publication, when made in term time, must be published in a paper selected by the court. *Otis v. Epperson*, 88 Mo. 131. The notice is sufficient if it be inserted four weeks, if the last insertion is four weeks before the commencement of the term. *Carr v. Russell*, 44 Mo. 252. Publication for four consecutive weeks means for twenty-eight days. *State v. Tucker*, 32 Mo. App. 620; *Bean v. County*, 33 id. 635.]

§ 2029. In any of the cases mentioned in section 2022, the plaintiff may cause a copy of the petition, with a copy of the summons, to be delivered to each defendant residing or being without this State, and at any place within the United States or their territories, twenty days before the commencement of the term at which such defendant or defendants are required to appear; and if the defendant shall refuse to receive such copy of the petition and summons, the offer of the officer to deliver to him the same, and such refusal, shall be as effectual service as though such copies were actually delivered to such defendant. Such service may be made by any officer authorized by law to serve process within the State or territory where such service is made, and shall be proved by the affidavit of such officer, stating the time and manner of such service, made before the clerk or judge of the court of which affiant is an officer. Such clerk or judge shall certify to the official character of the affiant, and to his authority to serve process within the State or territory where such service was made. When such certificate is made by a clerk or judge of a court of record, the same shall be attested by the seal of such court, and when the same is made by a judge of a

court not of record, the official character of such judge shall also be certified by the proper officer of the State, under his official seal. And any return of service, made and certified as above provided, shall be prima facie evidence of the facts stated in such return. If the plaintiff, in any of the causes mentioned in section 2022, shall make the affidavit required by said section, and shall file in said cause proof of service of process on any defendant or defendants, in conformity with the provisions of this section, it shall not be necessary for such plaintiff or plaintiffs to obtain the order provided in section 2022, or to procure the publication provided in section 2028. Service of process in conformity with this section shall be as effectual within the limits of this State as personal service within this State, and judgments rendered against defendants thus served shall have the same effect and force within the limits of this State as judgments rendered against defendants personally served with summons in this State.

[Return of personal service on non-resident must show compliance with the statutes. *Fisher v. Fredericks*, 33 Mo. 412.]

## CHAPTER XL.

### Conveyance of Real Estate.

Sec. 2399. Private corporations may convey real estate, how.

§ 2399. Any private corporation authorized to hold real estate may convey the same by deed, sealed with the common seal of such corporation, and signed by the president or presiding member or trustees thereof; and such deed, when acknowledged or proved, as other deeds of real estate are by law required to be acknowledged or proved, shall be recorded in the proper office, and have like effect as other deeds.

See § 2508, subd. 4, note, and cross-references; § 2514.

[Deed purporting to be deed of corporation, signed with corporate name by secretary and treasurer, with name of president, having word "seal" written with a scroll adjacent to names, and being acknowledged before notary, with recital that corporation, by its president and secretary, naming them, personally came before officer, etc., is a properly executed and acknowledged deed of corporation, under law as it stood prior to taking effect of act of April 2, 1883. Authority of officers to execute deed will be presumed in absence of evidence to contrary. *Fire Clay Works v. Ellison*, 30 Mo. App. 67.

A corporation cannot execute a valid conveyance after expiration of its period of existence. *Bradley v. Rappell*, 32 S. W. Rep. 645.

A deed executed by bank of St. Louis, having no other seal than a plaster of wax, without impression, is void, and conveys no title. *Perry v. Price*, 1 Mo. 645.

As to sufficiency of acknowledgments; see *Eppright v. Nickerson*, 78 Mo. 482.

Conveyance held fatally defective: defect, how cured. *Chouteau v. Allen*, 70 Mo. 290.]



## CHAPTER XLII.

## Private Corporations.

Art. I. Organization, general powers, duties and liabilities, with incidental matters of practice.

VIII. Manufacturing and business companies.

## ARTICLE I. ORGANIZATION, GENERAL POWERS, DUTIES AND LIABILITIES, WITH INCIDENTAL MATTERS OF PRACTICE.

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§ 2480. The term "corporation," as used in this chapter, shall be construed to include all joint-stock companies or associations hav-ing any powers or privileges not possessed by individuals or partnerships.

See Const., art. XII, § 11.

["Association of individuals" generally synony-mous with corporation, or applies to joint-stock companies having capital stock divided into shares and governed by articles of association, in which members assume liability of partners. *State v. Stone*, 118 Mo. 388; s. c. 24 S. W. Rep. 164.

By laws of Iowa a single person may become a body corporate. *Kimball v. Davis*, 52 Mo. App. 194.]

§ 2481. The first meeting of all corpora-tions shall, unless otherwise provided for in their acts of incorporation, be called by a notice, signed by some one or more of the persons named as corporators in the act of incorporation, and setting forth the time, place and purposes of the meeting, and such notice shall, seven days at least before the meeting, be delivered to each member, or published in some newspaper in the county where the corporation may be established, or if there be no such newspaper, then in the nearest newspaper.

See §§ 2482, 2484, 2780.

[All proceedings of persons professing to act as corporators, assembled beyond limits of State, are void. *Camp v. Byrne*, 41 Mo. 525.]

§ 2482. Whenever, for want of sufficient by-laws for the purpose, or of officers duly au-thorized, or from neglect or refusal of such officers, or from other legal impediments, a legal meeting of any corporation cannot otherwise be called, any justice of the peace

## Meetings of stockholders; election of directors — R. S., §§ 2483, 2484.

in the county where it is desirable to hold such meeting, or where such corporation is established, if it be local, may, on a written application of two or more members thereof, issue a warrant to either of said members, directing him to call a meeting of such corporation, by giving such notice as is required in the preceding section.

See § 2481, and cross-references.

§ 2483. Whenever any meeting of any corporation shall be called by warrant from a justice of the peace, the person to whom such warrant is directed may call the meeting to order and preside therein until a presiding officer is chosen and qualified, if there be no officer present whose duty it may be to preside.

§ 2484. Every meeting, for whatever object, of the shareholders in any corporation shall be convened by its president and secretary by a notice published for ten days previous to such meeting, where a longer notice is not otherwise by law or its own by-laws required, in a daily or weekly newspaper, published in the place or county in which the corporation is located, or by notice served personally on each shareholder, in writing, setting forth the place and hour and the object of such meeting. If the object of such meeting be to elect directors, or to take a vote of the shareholders in such corporation on any proposition in the notice aforesaid, the president, when not otherwise provided by law, shall appoint not less than two shareholders, who are not directors, inspectors to receive and canvass the votes given at such meeting and certify the result to him. At the next meeting of the board of directors, which shall be held within two weeks thereafter, the president shall lay before them the returns so certified, and thereupon such proceedings shall be had as the subject-matter decided by the election, or the vote, may require; and if for directors, the persons who received a majority of the votes cast shall be notified thereof. If the president and secretary fail to call any meeting of the shareholders in any corporation required by law or by the by-laws of such corporation to be held, any two shareholders may call such meeting and appoint inspectors in manner herein above provided, notwithstanding such meeting should be held at a later day than had such failure not happened. In all cases where the right to vote upon any share or shares of the stock in any incorporated company shall be questioned, it shall be the duty of the inspectors to require the transfer-books of such corporation as evidence of stock held in such corporation, and all shares that may appear standing thereon in the name of any person or persons shall be voted upon by such person or persons, directly by themselves or by proxy. Persons holding stock as executors, administrators, guardians or

trustees, or who have pledged their stock, shall be entitled to vote upon such stock. Every meeting of shareholders in any corporation shall be convened at nine o'clock a. m. and continued during at least three hours, unless the object for which it was so called be accomplished sooner: Provided, That if the object of such meeting be for any other purpose than to hold an election or to take a vote on any proposition, it shall be regulated by the by-laws of the corporation as to the manner of convening it, the time at which it shall be held, and the manner of conducting it; any corporation in which there are but ten or a less number of resident stockholders may regulate by by-law the manner of appointing inspectors, their number, and their qualifications.

See Const., art. XII, § 6, and cross-references. Meetings, how called. § 2481, and cross-references. Qualification of voters. § 2486. Annual meeting. § 2505. Executor to vote. § 2777. Prohibited from voting on hypothecated stock. § 2487.

[All proceedings of persons professing to act as incorporators, assembled beyond limits of the State, are void. *Camp v. Byrne*, 41 Mo. 525.]

A corporation cannot be organized without the limits of State creating it. *Id.* Where corporators met without the State and elected directors, persons elected are directors de facto, and legality of their election cannot be inquired into collaterally without showing a judgment of ouster against them in a direct proceeding by the government. *R. R. Co. v. Winkler*, 33 Mo. 354.

When corporation has been fully organized, and is exercising all functions contemplated by its charter, stockholders may elect directors outside of State which created it. *R. R. Co. v. McPherson*, 35 Mo. 13. And directors may act and exercise powers beyond territorial limits of State. *Id.* When charter, granted by State of Illinois, declares certain persons to be a corporation, naming directors thereof, such directors may meet and act in Missouri. *Id.*

Director's vote for his own salary is illegal and cannot have effect of adopting resolution fixing said salary. *Davis Co. v. Bennett*, 39 Mo. App. 460.

Though directory is composed of greater number of members than allowed by charter, if stockholders do not complain, but acquiesce, acts of such directory, otherwise regularly had, will bind corporation. *Hax v. Mill Co.*, 39 Mo. App. 453.

In absence of anything to contrary in charter or by-laws, a majority of directory will constitute quorum, and majority of that quorum can do business of board; and fact that plaintiff, a member, was present at meeting, but abstained from voting will not vitiate action of board fixing his salary as president. *Id.*

Quorum of a majority of directors is sufficient for passage of resolution authorizing conveyance of property. *Foster v. Mullanphy*, 92 Mo. 79; s. c., 4 S. W. Rep. 260.

Acts of boards of directors, evidenced by a written vote, are as binding on corporation, and as complete authority to agents as most solemn acts done under corporate seal. *Crupbell v. Pope*, 96 Mo. 468; s. c., 10 S. W. Rep. 187.

Competent for directors to make assignment for benefit of creditors, provided there is no restriction in statute, charter, articles of association or by-laws; and this they may do not only without consent, but even against expressed will of stockholders. *Hutchinson v. Green*, 91 Mo. 367; s. c., 1 S. W. Rep. 853.

Directors are justified in using corporate property to pay debts of company, although company be thereby disabled from carrying on its business, provided they act in good faith. *Bank v. Iron*



Co., 97 Mo. 38; s. c., 10 S. W. Rep. 865. Fact that directors sell property of corporation to a new corporation, of which they are directors and stockholders, will not make sale absolutely void. *Id.*

Contract by a director to use his vote and influence to disadvantage of corporation is illegal. *Attaway v. Bank*, 93 Mo. 485; s. c., 5 S. W. Rep. 16.

Directors must not use corporate funds for private purposes. *Packet Co. v. Davidson*, 95 Mo. 467; s. c., 8 S. W. Rep. 545.

If so used, profits must be turned over to the corporation. *Id.* But this is not so where such use was with consent of all stockholders. *Mfg. Co. v. Meplam*, 30 Mo. App. 15. And a director may deal with the corporation as an outsider may, by a fair business method. *Grocer Co. v. Crow*, 36 Mo. 288.

Corporate stock is a trust fund for creditors, but it has never been held that directors are trustees for creditors. *Id.*

Directors have a large discretion in declaring dividends, but it must be exercised reasonably. *Slayden v. Coal Co.*, 25 Mo. App. 439.

Where by-laws authorized a special meeting of directors only on call of president or majority of members of board, such meeting if otherwise called is void. *Hill v. Mining Co.*, 119 Mo. 9; s. c., 24 S. W. Rep. 223.

Special meeting of directors void, if notice required by by-laws is not given. *Id.*

Directors of corporation are its business managers merely, and have in general no power over membership. *Ollsheimer v. Mfg. Co.*, 44 Mo. App. 172.

Directors are governing body of corporation, and cannot bind it except when assembled and acting as a board. *Hill v. Mining Co.*, 119 Mo. 9; s. c., 24 S. W. Rep. 223; *State v. Lockett*, 54 Mo. App. 202.

Action of individual members cannot bind corporation. *Id.*

Directors have no power to alter character of corporation or change articles of association. *Ollsheimer v. Mfg. Co.*, *supra*.

Where officer has been allowed to manage affairs of corporation, his authority to represent corporation may be implied from manner in which he has been permitted by directors to transact its business. *Sparks v. Transfer Co.*, 104 Mo. 531; s. c., 15 S. W. Rep. 417.

Directors may meet in foreign State, and contract for sale of property here, and may direct its president to execute a deed; and his acts in so doing are as valid as if performed at office of corporation here. *Lead Co. v. Reinhard*, 114 Mo. 218; s. c., 21 S. W. Rep. 488.

Duty of directors to protect and preserve corporate property for minority, as well as majority of stockholders. *Hannerty v. Standard Co.*, 109 Mo. 297; s. c., 19 S. W. Rep. 82.

Relation between directors and company in many respects a fiduciary one. *Hill v. Mining Co.*, 119 Mo. 9; s. c., 24 S. W. Rep. 223.

Directors not considered trustees so as to prevent their setting up statute of limitations in actions in which they are called to account for their acts as directors. *Landis v. Saxton*, 105 Mo. 486; s. c., 16 S. W. Rep. 912.

Directors of corporation when acting in perfect good faith may secure a preference to themselves, even though corporation is insolvent. *Forster v. Mill Co.*, 16 Mo. App. 150; s. c., 92 Mo. 79; s. c., 4 S. W. Rep. 260.

Where directors improperly convey assets of insolvent corporation to themselves or to a part of their number, remedy of creditors is by proceeding in equity to avoid deed and subject all property to claims of creditors. *Id.*

If proceeding is by a single creditor, he is entitled only to his pro rata share of assets. *Id.*

Where insolvent corporation transfers substantially all its property to directors of creditor bank, thereby being compelled to suspend business, and then executes deed of assignment for benefit of creditors as to residue of its assets, transaction will be deemed an evasion of Assignment Law, and equity will compel bank to share pro rata with other creditors. *Larrabee v. Franklin*, 114 Mo. 592; s. c., 21 S. W. Rep. 747.

Mere fact that corporation, at time of making sale of its property to foreign corporation, failed to provide for payment of contested claim, does not warrant inference that transfer was made to defraud creditors. *Lead Co. v. Reinhard*, 114 Mo. 218; s. c., 21 S. W. Rep. 488.

Directors not prohibited from lending money to corporation, when it is needed for its benefit and transaction is open and free from blame; and they may take deed of trust upon property of company to secure such indebtedness. *Forster v. Mill Co.*, 16 Mo. App. 150; s. c., 92 Mo. 79; s. c., 4 S. W. Rep. 260. Courts of equity will, upon slight ground, set aside such conveyance. *Id.* But because such deeds may be avoided it does not follow that it is void. *Id.* Nor does such a transaction furnish a ground for attachment. *Id.*

Director may, in good faith, loan money to corporation for legitimate purposes, and hold it as a valid claim. *Foster v. Refining Co.*, 118 Mo. 238; s. c., 24 S. W. Rep. 63. Duty of directors to provide for payment of liabilities and they are entitled to commendation if, when treasury is depleted, they pay debts out of their personal means. *Id.*

Where director indorses notes of corporation for its accommodation, corporation may secure such director if indorsement in good faith to secure an honest debt. *Smith v. Ry. Assn.*, 47 Mo. App. 462.

Where corporation holds leasehold interest in land, with privilege of buying the fee, assignment of such privilege to a director and his purchase of fee by means of it are valid against corporation, where it appears that corporation had neither money nor credit to make the purchase. *Hannerty v. Standard Co.*, 109 Mo. 297; s. c., 19 S. W. Rep. 82.

Where two persons, virtually owners of railroad corporation, entered into contract with it to construct railroad, in consideration of transfer of all assets of corporation, such contract is void. *Jackson v. McLean*, 100 Mo. 130; s. c., 13 S. W. Rep. 393. Such parties are trustees of public, and contract by them with corporation for their own private gain is illegal. *Id.*

Where directors enter into a contract in which two of them are directly interested, such contract is not binding if there is not a quorum present and voting, without counting interested directors. *Hill v. Mining Co.*, 119 Mo. 9; s. c., 24 S. W. Rep. 223.

Directors not entitled to compensation unless by virtue of some statute, by-law or prior action of stockholders. *Pfeiffer v. Lansburg Co.*, 44 Mo. App. 59. Directors cannot vote themselves compensation for such services after services have been rendered. *Id.* Executive committee of joint-stock company have no right to vote to themselves moneys in addition to their regular compensation. *Id.*

Directors, who for many years have had entire management of a bank, are chargeable with knowledge of its insolvency. *McDaniel v. Harvey*, 51 Mo. App. 198.

Directors are trustees for stockholders and will not be permitted to manage corporate property for their personal gain or to acquire an advantage over other stockholders. *Hill v. Gould*, 129 Mo. 106; s. c., 30 S. W. Rep. 181. Contract made between two corporations where directors of one are largely interested in stock of another will be closely scrutinized by courts, but are not necessarily fraudulent. *Id.*

While directors may employ one of their number to perform services which are not necessarily incidental to his duty as director, he will not be entitled to compensation therefor, unless it is fixed by corporate action before rendition of services. *Rose v. Carbonating Co.*, 60 Mo. App. 28; § 2484 construed; *Tomlin v. Bank*, 52 Mo. App. 437.]

§ 2485. An inspector, before he shall enter on the duties of his office, shall take and subscribe the following oath before any officer authorized by law to administer oaths: "I do solemnly swear that I will execute the



## Election of directors; directors to appoint officers — R. S., §§ 2486-2491.

duties of an inspector of the election now to be held with strict impartiality, and according to the best of my ability.”

§ 2486. At every election of directors, the transfer-books of the corporation shall be produced to test the qualifications of the voters, and no person shall be admitted to vote, directly or by proxy, except those in whose names the shares of the stock of the corporation shall stand on such books, and shall have stood for at least thirty days previous to the election.

See Const., art. XII, § 6, and cross-references. Meetings of shareholders. § 2484, and cross-references.

[Right of shareholder to vote in election of directors on the cumulative plan is one guaranteed by law, and cannot be taken away by resolution or by-law adopted by a majority of shareholders. *Tomlin v. Bank*, 52 Mo. App. 430. Such right will not be waived by mere silent acquiescence in the acts of others. *Id.*]

§ 2487. No person shall be admitted to vote on any shares of stock belonging or hypothecated to the corporation in which the election is held.

See § 2484, and cross-references.

§ 2488. If any election for directors in any such corporation shall not be held on the day appointed, it shall be the duty of the directors to notify and cause such election to be held within sixty days after the day so appointed; and on the day so notified, no person shall be admitted to vote except those who would have been entitled had the election taken place on the day when it ought to have been held.

See § 2490.

§ 2489. A failure to elect directors on the day designated by law shall not have the effect of dissolving such incorporated company.

§ 2490. In all elections for directors or managers of any incorporated company, each shareholder shall have the right to cast as many votes in the aggregate as shall equal the number of shares of stock so held by him or her in said company, multiplied by the number of directors or managers to be elected at such election, and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute them among two or more candidates; and such directors or managers shall not be elected in any other manner.

See Const., art. XII, § 6, and cross-references. Prohibited from voting on hypothecated stock. § 2487. Directors, how chosen. § 2772. Executurs may vote. § 2777.

[Above section applied. *Tomlin v. Bank*, 52 Mo. App. 434.]

§ 2491. The directors shall appoint one of their number president; they may also appoint a treasurer and secretary, and such other officers and agents as shall be prescribed by the by-laws of the company.

Majority sufficient to transact business. § 2510; see § 2508, subd. 5.

[President may appear and confess judgment. *Chamberlain v. Mining Co.*, 20 Mo. 96.

Officers have power to employ attorneys, and authorization by directors is not necessary. *Bank v. Gilstrap*, 45 Mo. 419.

Where the president purchases a claim against the company for less than its face value, and then allows judgment to go against company for full amount, taking assignment of judgment to himself, he cannot hold balance of judgment for his private advantage. *Lingle v. Hogan*, 45 Mo. 109. If company is insolvent, creditors whose rights are impaired thereby may raise the objection. *Id.*

President, having endeavored to obtain contracts for his company and failed, is not precluded from making such contracts in his own behalf; but having done so, he must use all facilities afforded by his company in performing them, and will not be allowed to make profit out of such use, but will be held to account to company for all he receives for services performed by it. *Packet Co. v. Davidson*, 95 Mo. 467; s. c., 8 S. W. Rep. 545.

Corporation which accepts benefit of work done upon its president's order is estopped to deny president's power to make contract. *Brown v. Wright*, 25 Mo. App. 54.

No proof of president's authority is requisite, to establish an assignment made by corporation, through its president, of a special tax bill. *Bambrick v. Campbell*, 37 Mo. App. 460.

President and general manager has no power, as such, to borrow money for corporation and to assign as security therefor assets of corporation. *Hyde v. Larkin*, 35 Mo. App. 365. There can be no ratification of such act when directors have no knowledge that act has been done. *Id.*

Knowledge of officer of facts required by him in course of his private business, not in his official capacity, does not constitute knowledge of corporation. *Manhattan Co. v. Webster*, 37 Mo. App. 145; *State v. Printing Co.*, 25 id. 642.

Knowledge of officers of prior unrecorded deed of trust, acquired while acting for themselves, will not be regarded as knowledge of corporation. *Johnston v. Shortridge*, 93 Mo. 227; s. c., 6 S. W. Rep. 64. Evidence held sufficient to support finding of trial court that subsequent grantees took with knowledge of prior unrecorded deed of trust. *Id.*

Compensation of superintendent of corporation, who is director, must be fixed by corporate action, a record of which should be made upon books of corporation. *Besch v. Mfg. Co.*, 36 Mo. App. 333.

Motion fixing salary of officer, passed before services are rendered, will be sufficient, though there is no law establishing such salary. *Hax v. Mill Co.*, 39 Mo. App. 453.

One who is both secretary and director, not entitled to compensation as secretary, in absence of express prearrangement therefor. *Pfeiffer v. Lansberg Co.*, 44 Mo. App. 59. By-law provided “no salary shall be paid to the officers of this company \* \* \* except to the secretary.” Held, not to provide by implication for compensation of secretary. *Id.*

Secretary of a corporation for manufacture of machinery has no implied power to bind it to buy clothing for employees. *Shoe Co. v. Iron Works*, 51 Mo. App. 66. Though secretary has no power to sign a lease on behalf of the corporation, yet such action on his part may be ratified. *Welsh v. Brewing Co.*, 47 Mo. App. 608. One who is both secretary and treasurer, and owns a majority of the stock and has entire control of the business, can make a valid assignment

of a contract entered into by the corporation with another company, which will be valid without formal action of board of directors. *Moore v. Mfg. Co.*, 113 Mo. 98; s. c., 20 S. W. Rep. 975. Upon expiration of his term, secretary must surrender all property which has come into his possession as such, whether his accounts have been adjusted or not. *State v. Davis*, 54 Mo. App. 447. And such surrender will be enforced by mandamus. *Id.*

President may, without special authority from board, perform all acts of ordinary nature, which by usage or necessity are incident to his office, and may bind corporation by contracts made in usual course of business. *Sparks v. Transfer Co.*, 104 Mo. 531; s. c., 15 S. W. Rep. 417. When president and managing officer assigns a chose in action belonging to corporation in payment of corporate debt, his authority to make assignment may be shown by evidence that corporation held him out as possessing such authority. *State v. Heckart*, 49 Mo. App. 280. And where he is permitted to exercise certain powers without obtaining special authority from board of directors, such authority may be inferred. *Id.*

Corporation may be bound by acts of its president done within his apparent authority. *Sparks v. Transfer Co.*, 104 Mo. 531; s. c., 15 S. W. Rep. 417.

Knowledge of misrepresentation by secretary of a corporation in the sale of its stock for which purchaser gives his note to him, cannot be imputed to a bank of which the secretary is cashier and which discounts the note in the course of business. *Benton v. Bank*, 26 S. W. Rep. 975.

Power to remove a corporate officer from his office for reasonable and just cause is one of the common-law incidents of all corporations. *State v. Walbridge*, 119 Mo. 383; s. c., 24 S. W. Rep. 457. Knowledge acquired by corporate officer while in discharge of his official duties is knowledge of the corporation. *Bank v. Schaumburg*, 38 Mo. 228. But not when acquired through his private transactions. *Bank v. Froman*, 129 Mo. 427; s. c., 31 S. W. Rep. 769; *Benton v. Bank*, 122 Mo. 332; s. c., 26 S. W. Rep. 975.

Where one is an officer of two corporations and they have business transactions with each other, knowledge of officer cannot be attributed to either corporation in a matter in which he did not represent it. *Id.*

Approval and ratification, by a corporation, of acts of its officers is equivalent to the possession, on their part, of original authority to perform such acts. *Donham v. Hahn*, 127 Mo. 439; s. c., 30 S. W. Rep. 134.

When by-laws of corporation provide that its secretary, in addition to certain specified duties, shall perform such other duties as directors may require, on prosecution of secretary for embezzlement, evidence of usage and custom is admissible to show that money came into his hands by virtue of his employment. *State v. Silva*, 130 Mo. 440. So it is competent to show, irrespective of by-laws, that it was part of defendant's duty as secretary, to receive accounts for money which he was charged with having embezzled. *Id.* On prosecution of secretary for embezzlement, delivery to him of packages of money addressed to corporation of which existing one was successor, held competent. *Id.*

An assignment of a claim held by a corporation, when signed by president and secretary and sealed with corporate seal, is prima facie valid. *State v. Heckart*, 62 Mo. App. 427.

Where president, pretending to have authority to act for corporation, sells its lands, representing that there are more acres than there really are, collects and returns the money into funds of corporation, corporation is estopped to deny his authority, and is liable to pay back the money wrongfully collected by him. *Akers v. Bank*, 63 Mo. App. 316.

Contract, signed by president and secretary of corporation, will be presumed to be within powers of these officers in absence of evidence to contrary. *Winscott v. Invest. Co.*, 63 Mo. App. 367. Defense of ultra vires is not open to corporation when contract has been fully executed

on part of contracting party, and is not expressly prohibited by law. *Id.*

Secretary is not an officer of general power or authority. He has no power, as secretary, to bind corporation by contract, and contract made by him will not be binding in absence of evidence of authority or ratification. *Simmmons v. Estate*, 64 Mo. App. 677.

When officer deals with corporation in his individual interest, corporation is not chargeable with his uncommunicated knowledge of facts derogatory to his title to property involved. *Stone Cutters Co. v. Myers*, 64 Mo. App. 527.

An officer of a corporation cannot escape liability for fraud on ground that he was acting for corporation. *Bank v. Byers*, 41 S. W. Rep. 325.]

§ 2492. Whenever any corporation shall be organized under the laws of this State, it shall be the duty of the officers of said corporation to file with the secretary of State a copy of the articles of association or incorporation, and the corporate existence of such corporation shall date from the time of filing said copy of such articles; and a certificate by the secretary of State, under the seal of the State, that said corporation has become duly organized, shall be taken by all courts of this State as evidence of the corporate existence of such corporation; a certified copy of said certificate of the secretary of State shall be filed and recorded in the office of the recorder of deeds of the county in which the corporation is organized.

See Const., art. X, § 21. Amendments to articles. § 2495. Articles of agreement to be filed. § 2769. Foreign corporation required to file articles. Act of 1891, at p. 53. Corporation to report to secretary of State. Act of 1893, at p. 55. Articles as evidence. § 2770.

[Corporate existence dates from the filing of articles of association with secretary of State. *Hurt v. Salisbury*, 53 Mo. 310; *Richardson v. Pitts*, 71 id. 128; *Martin v. Fewell*, 79 id. 410; *Mining Co. v. Richards*, 95 id. 110; *Fay v. Richmond*, 18 Mo. App. 363; *Neff v. Rhodes*, 20 id. 347.

"Corporate existence" means full authority to transact business. *Hurt v. Salisbury*, supra.

Lawful existence of corporations acting under color of law cannot be questioned collaterally. *Comrs. v. Shields*, 62 Mo. 247. Corporate existence may be proved by legislative recognition. *R. R. Co. v. St. Louis*, 66 Mo. 228. A corporation, by appearing to a suit, thereby admits its corporate existence. *Seaton v. R. R. Co.*, 55 Mo. 416; *Witthouse v. R. R. Co.*, 64 id. 523. Legal existence of a corporation can only be questioned by quo warranto or other direct proceeding, instituted by State for that purpose. *St. Louis v. Shields*, 62 Mo. 247; *Drug Co. v. Robinson*, 81 id. 26; *Haskell v. Worthington*, 94 id. 560; s. c., 7 S. W. Rep. 481. It cannot be questioned by a stockholder. *Ins. Co. v. Sherwood*, 72 Mo. 461. So, also, as to whether charter has expired by limitation of time. *Gas Light Co. v. St. Louis*, 84 Mo. 203; 11 Mo. App. 65. Such expiration not to affect pending suits. *Id.*]

§ 2493. No corporation, company or association other than those formed for benevolent, religious, scientific, fraternal-beneficial or educational purposes, shall be created or organized under the laws of this State, unless the persons named as corporators shall, at or before the filing of the articles of



## Subscriptions — R. S., § 2494.

association or incorporation, pay into the State treasury fifty dollars for the first fifty thousand dollars or less of the capital stock of such corporation or association, and a further sum of five dollars for every additional ten thousand dollars of its capital stock; and no increase of the capital stock of any such corporation, company or association shall be valid or effectual until such corporation, company or association shall have paid into the State treasury five dollars for every ten thousand dollars or less of such increase in the capital stock of said corporation or association; and it shall be the duty of said corporation or association to file a duplicate receipt of the State treasurer for the payments herein required to be made, with the secretary of State, as is provided by this article for the filing of articles of incorporation or association.

See Const., art. X, § 21.

§ 2494. When such articles of association and affidavit are filed in the office of the secretary of State, the directors named in such articles of association may, in case the whole of the capital stock is not before subscribed, open books of subscription to fill up the capital stock of the company, in such places and after giving such notice as they may deem expedient, and may continue to receive subscriptions until the whole capital stock is subscribed. At the time of subscribing, every subscriber shall pay to the directors five per cent, on the whole amount subscribed by him, in money, and no subscription shall be received or taken without such payment.

See cross-references, and note to Const., art. XII, § 9.

[It is not the subscribing of stock merely, but the payment of same which constitutes furnishing of capital. *State v. Thompson*, 27 Mo. 365.]

Subscription for shares of stock makes subscriber a stockholder, though he fails to meet subsequent calls thereon. *Schaeffer v. Ins. Co.*, 46 Mo. 248.

Subscription made by county court to a railroad without ascertaining the sense of taxpayers thereon, is void. *R. R. Co. v. Court*, 42 Mo. 171.

County subscribed for stock, and several years afterward issued its bonds in payment of same. Held, a ratification of original subscription, and warranted a purchaser in assuming that preliminaries had been complied with. *Barrett v. Court*, 44 Mo. 197. Fact that county, by its agent, voted on such subscription for twelve years was a waiver of all defects in original subscription. Where charter of corporation provided that it should not proceed to transaction of business until stock amounting to \$350,000 had been subscribed and paid in, but contained the further provision that books should be open for subscription to capital stock for no less than \$350,000, and that, within twenty days from closing of subscription, an election for directors should be held, it is not a condition precedent to enforcing collection of calls duly made upon stock subscribed, that \$350,000 should be actually paid in, but only that it should be bona fide subscribed. *McDermott v. Donegan*, 44 Mo. 85.

Where one subscribed to stock of corporation, upon faith of an agreement made with a previous stockholder, that he would not be required to pay

his subscription unless road should be completed, this agreement was void, and subscriber is liable for full amount subscribed. *Road Co. v. Mays*, 29 Mo. 64.

Where person subscribes to stock of railroad company, on condition that road should pass through a certain county, and by a designated route, it is not a condition precedent to right of company to demand subscription, that it should have actually constructed the road along line designated. If the road be thus permanently located, it is sufficient. *R. R. Co. v. Winkler*, 33 Mo. 354.

Subscriber to stock, who has accepted charter, and assisted in putting it in operation, cannot show as a defense to a suit to collect his subscription, that company had no legal existence. *Id.*; *Smith v. Heldecker*, 39 Mo. 157. Or that it was not organized in strict conformity to law. *Road Co. v. Clemens*, 16 Mo. 359.

Subscriber to stock of railroad company not released from liability to pay calls made upon his subscription, because directors had violated provisions of charter. *Road Co. v. Menefee*, 25 Mo. 547.

A person who subscribed for stock under an original charter will not be discharged from liability to pay for it by a subsequent alteration of charter without his consent, general object of corporation remaining same. *R. R. Co. v. Renshaw*, 18 Mo. 210.

What changes will not relieve subscriber to stock of liability on his subscription; cases reviewed. *R. R. Co. v. Hughes*, 22 Mo. 291.

When corporation becomes insolvent, a creditor stockholder cannot apply his unpaid balance in exclusive satisfaction of any demand he may hold against the corporation. *Shickle v. Watts*, 94 Mo. 410; s. c., 7 S. W. Rep. 274.

A stockholder, whether an original subscriber or a purchaser, is liable for unpaid stock. *Id.*

The claim of a creditor of a corporation against a stockholder for unpaid stock matures on dissolution of the corporation, and must be exhibited within two years. *Garesche v. Lewis*, 93 Mo. 197; s. c., 6 S. W. Rep. 54. The stockholder's liability becomes fixed by the insolvency and dissolution of the corporation, and then becomes a primary liability. *Id.* The creditor's cause of action against the stockholder accrues when his cause of action against the corporation accrues. *McGinnis v. Kortkamp*, 24 Mo. App. 378. And the action may be brought at any time within five years after maturity of the debt, though more than five years after dissolution of the corporation. *Id.*

Person who signs, unconditionally, articles of association, with a number of shares opposite his name, thereby agrees to take shares and pay persons named as managers fifty per cent, thereof as soon as corporation shall be organized and before articles shall be recorded. *Joy v. Manion*, 28 Mo. App. 55.

Conditional subscription is one where happening of condition must precede liability to pay, not one where it is necessarily subsequent to subscription. *McGinnis v. Kortkamp*, *supra*.

A corporation cannot sue a bona fide subscriber to stock on his subscription, when the charter has been obtained by fictitious subscriptions for part of the stock, constituting a fraud upon and injury to such bona fide subscriber, who has not accepted the charter or assisted in putting it into operation. *Clark v. Barnes*, 58 Mo. App. 667.

Subscription to capital stock of a corporation to be organized constitutes a contract not only between the subscriber and the corporation, but also between him and each of the other subscribers, both precedent and subsequent. *Ollesheimer v. Mfg. Co.*, 44 Mo. App. 172. A subscriber to stock is liable on his subscription when it was made in his own name, but upon a secret trust for another; or when made as trustee for a corporation which has no power to subscribe for such shares. *Id.* A person who subscribes to shares in the name of a fictitious or irresponsible person becomes personally bound thereby. *Id.* And rule is same, even where the agency or trusteeship is expressed, if the contract is executed by the agent for a party incapable of con-



## Amendment of articles; corporate name; installments — R. S., §§ 2495-2498.

tracting. *Id.* A contract of subscription absolute on its face cannot be affected by any extrinsic or collateral agreements between subscriber and promoters. *Id.* Directors have no power to discharge one subscriber and substitute another in his place. *Id.*

Corporation can make no arrangement with stockholders by which they are released from payment of any part of their stock subscriptions, so as to affect rights of creditors. *Ramsey v. Mfg. Co.*, 116 Mo. 313; s. c., 22 S. W. Rep. 719.

Liability of subscriber cannot be discharged by a mere cancellation of subscription, unaccompanied by reissue of shares subscribed for, trust fund afforded by capital stock being thereby diminished. *Ollesheimer v. Mfg. Co.*, 44 Mo. App. 172.

Corporation being insolvent, new corporation organized; directors of new corporation same as that of old. Directors of new corporations canceled stock belonging to themselves and others in old corporation, and issued in place thereof to the holders an equal amount of stock of new corporation. Held, that action of directors was void. *McDaniel v. Harvey*, 51 Mo. App. 198.

Arrangement by which stockholder releases his shares to a corporation may be valid as between himself and corporation and yet invalid as to creditors. *Wells v. Mfg. Co.*, 51 Mo. App. 41. Such a surrender and reissue of shares by corporation to another do not create an overissue, and will not constitute a defense to such other person in proceeding to enforce his liability on these shares. *Id.*

Where a party was one of original incorporators, his name having been signed to articles of incorporation, was, from first to last, director, officer and one of its active managers, where he put money into the concern to further its objects, signed certificates of stock as its assistant secretary, and performed other services in connection with corporation as a corporator, these facts amply justify conclusion that he was a corporator. *Kimball v. Davis*, 52 Mo. App. 194.

Word "stockholder," as used in statute, included stockholders, or members having a direct financial interest in business of corporation, with power to participate in profits and in conduct of its affairs. *Id.*

Individual stockholders not acting as an organized body are powerless to perform duties or exercise powers, even though all of them confer in doing a particular thing. *State v. Wray*, 55 Mo. App. 646.]

§ 2495. All amendments to articles of association of corporations organized under the laws of this State, made and filed in the office of the secretary of State, are and shall be and become a part of the articles of association of the corporation adopting and filing the same; and this section shall not be so construed as to give any corporation whose articles are amended as in this article contemplated, any greater rights than though the subject of the amendments had been incorporated into the original articles of association; and any corporation, company or association which may increase its capital stock under the provisions of this article shall pay the additional amount provided by law for such increase.

See § 2492, and cross-references.

[Acceptance by a corporation of amendments to its charter may be inferred from acts of officers. *Sumrall v. Ins. Co.*, 40 Mo. 27.

Directors of a moneyed corporation have no power to procure or give their consent to such changes in charter as require assent of corporation. *Ins. Co. v. Beckmann*, 47 Mo. 93.

Where insurance company, after change in its charter, brings suit against one of its former stockholders on a note given prior to change, it is not bound to show an acceptance of amendment by corporation. *Id.* Assent to new charter will be inferred from acts inconsistent with any other hypothesis. *Id.*]

§ 2496. No certificate of its incorporation or certificate of its change of corporate name shall be issued by the secretary of State to any company or association: First, under the same corporate name and style as that already assumed by another corporation; nor, second, when the corporate name and style assumed is the name of a person or a firm, unless there be joined thereto some word designating the business to be carried on, followed by the word "company" or "corporation."

See § 2768.

[Secretary of State must exercise his discretion in determining whether a company has adopted a name that is same as or in imitation of an existing corporation, and he will not be compelled by mandamus to issue certificate until it appears that law has been complied with by company in adoption of name. *State v. McGrath*, 92 Mo. 355; s. c., 5 S. W. Rep. 29. Company organized for purpose of dealing in real estate, stocks, etc., under name of "the Kansas City Real Estate Exchange," will not be entitled to certificate of incorporation from secretary of State under above section, when there is already a duly incorporated company in the same business under name of "Kansas City Real Estate and Stock Exchange." *Id.*

When corporation assumes name which so resembles that of business rival that business of latter be diverted, use of such name will be restrained by court of equity. *Seed Co. v. Michel*, 37 Mo. App. 313. To warrant such relief, facts must be established by very satisfactory proof. *Id.* When conduct is merely of a fair competitor in same business, and name assumed is not likely to mislead ordinary purchasers, court of equity will not interfere. *Id.* When case is free from actual fraud, fact that some confusion and friction in business results from similarity of names will not warrant interference. *Id.*]

§ 2497. All existing corporations whose corporate name and style is the name of a person or of a firm shall change such corporate name and style to conform to the provisions of the second subdivision of the preceding section, within sixty days after this chapter takes effect, or ipso facto their corporate powers shall be forfeited.

See § 2508, subd. 7.

[Change of name of corporation does not affect its rights. *Woodson v. Skinner*, 22 Mo. 13.]

§ 2498. The board of directors, trustees or other body of persons lawfully exercising the corporate powers of any corporation may require the subscribers to the capital stock of the company to pay the amount by them respectively subscribed, in such manner and in such installments as may be required by the by-laws. If any stockholder shall neglect to pay any installment, as required by a resolution of the board of

## Issue of stock and bonds; increase of stock or bonds — R. S., § 2499.

directors, or persons exercising the corporate powers of such corporation, the directors or other persons exercising such corporate powers may declare his stock and all previous payments forfeited to the use of the company; but no stock shall be forfeited until they shall have caused a notice in writing to be served on him personally, or by depositing the same in the post-office, properly directed to him, at the post-office nearest his usual place of residence, stating that he is required to make such payment at the time and place specified in said notice, and that if he fails to make the same, his stock, and all previous payments thereon, will be forfeited for the use of the company, which notice may be served as aforesaid, at least sixty days previous to the day on which such payment is required to be made.

Corporation may sue its members. § 2516.

[Stockholder cannot, by selling, without company's consent, to an insolvent, escape from responsibility to company for unpaid installments upon his stock. *Spring Co. v. Harris*, 20 Mo. 382; *McClaren v. Franciscus*, 43 id. 452.

Where charter authorized company, in certain cases, to make assessments on stockholders beyond their shares of stock, no such assessment can be made on a party after he has ceased to be a member by transfer of his stock. *Spring Co. v. Harris*, supra.

While stockholder has right to participate in profits he cannot be said to be a joint owner of property of corporation. *Spurlock v. Ry. Co.*, 90 Mo. 199; s. c., 2 S. W. Rep. 219.

While the assets of a corporation passed to the assignee for benefit of creditors, no discretionary powers of the corporation passed to him, and he cannot make assessments or calls upon stock subscriptions. *Boeppler v. Menown*, 17 Mo. App. 447.

In absence of expressed statute to contrary, liability to pay calls and to respond to creditors, in event of insolvency, attaches to holder of legal title to stock. *Bagley v. Tyler*, 43 Mo. App. 195. One who takes stock as collateral security and has it transferred to himself and so registered on books will be liable to creditor. *Id.*

Any false statement or representation which induces a person to become a shareholder, if made by an agent within general scope of his powers, will enable shareholders to repudiate their contract. *Ramsey v. Mfg. Co.*, 116 Mo. 313; s. c., 22 S. W. Rep. 719. Where subscription to stock and subsequent payment therefor have been procured by fraudulent misrepresentations, stockholder may recover back land and money with which he paid for stock, notwithstanding insolvency of corporation; at least where rights of creditors are not involved. *Id.*

Corporation illegally organized cannot collect amount of subscription to stock from one not estopped by his own acts to allege want of corporate existence in defense. *Clark v. Barnes*, 58 Mo. App. 667.]

§ 2499. The stock or bonds of a corporation shall be issued only for money paid, labor done or money or property actually received. Any corporation may increase its capital stock or its bonded indebtedness with the consent of the persons holding the larger amount in value of the stock, which consent to such increase shall be obtained at a meeting of the shareholders, called for that purpose — sixty days' notice of the time and

place of such meeting and of the amount of the proposed increase of stock or bonded indebtedness having been given as hereinafter provided; but the shares of stock or bonds arising from such increase shall only be disposed of for money paid, labor done or money or property actually received. All fictitious issues or increase of stock or of bonds of any corporation shall be void: Provided, however, That the bonded indebtedness of a corporation shall not be increased so that the entire amount thereof shall exceed the amount of the authorized capital, except that any railroad company may issue its bonds in excess of its capital stock for the purpose of constructing or acquiring another railroad, which shall connect with the railroad of the company issuing such bonds, but the bonds so issued in excess of its capital stock shall not exceed the authorized capital stock of the company whose road is constructed or acquired with the proceeds thereof, and shall be secured by mortgage on the railroad franchises and property constructed or acquired with the proceeds thereof, or by the deposit as collateral security of the first mortgage bonds of the railroad constructed or acquired with the proceeds thereof. But no such bonds shall be issued without first obtaining the consent of the persons holding the larger amount in value of the stock of the company issuing the same, at a meeting called for that purpose, and of which meeting and the object and purpose thereof sixty days' public notice shall be given by advertisement in a daily or weekly newspaper published in the town or city in this State where the general offices of the company issuing such bonds may be located.

See Const., art. XII, § 8, and cross-references. Fraudulent issue of stock, penalty. §§ 2571, 2572. Stock not to be paid by note. § 2775.

[Business corporations cannot exchange their goods for their capital stock so as to reduce or retire the latter. *Mfg. Co. v. Hilbert*, 24 Mo. App. 338.

Where an agreement is made whereby contractor is to perform work or furnish material to corporation, and to take unpaid stock in part or full payment, such contractor can only charge reasonable market value for labor or material thus given for stock. *Shickle v. Watts*, 94 Mo. 410; s. c., 7 S. W. Rep. 274.

Agreements by corporation to pay more than such reasonable compensation, disregarded when rights of creditors intervene, even when no fraud is proved. *Id.*

Where corporation is organized on basis of stock being paid up in full, and one-third was paid up in cash, and remainder in stock of goods whose sufficiency of value is not questioned, requirements of law are substantially complied with, and no cause of action can be based upon a charge of non-payment of capital stock. *Grocer Co. v. Crow*, 36 Mo. App. 288.

Agreement that capital stock should be paid in full by transfer of coal lands, for which parties to agreement had option in contract, and by services rendered in its promotion, that corporation should then issue \$300,000 in bonds, secured by mortgage on corporate property, and with proceeds thereof land should be paid for, and promoters should be repaid all money advanced in satisfying land contract and expenses of buying land and organizing corporation, residue to be



## Increase of stock; transfers of stock — R. S., §§ 2500-2502.

applied in developing the coal, is contrary to public policy, and will not be enforced by a court of equity. *Garrett v. Mining Co.*, 113 Mo. 330; s. c., 20 S. W. Rep. 965.

Contract that corporation, when organized, shall issue stock as fully paid up, when, in fact, contemplated payment is fictitious, is an agreement to perform an act which is ultra vires, and one which equity will not enforce. *Id.*

Fact that contract provided for turning over land at actual cost is immaterial to question of its validity, where it is apparent on face of contract that land and services were not a fair equivalent for stock to be issued. *Id.*

Whether directors of newly organized banking corporation can authorize its stock to be paid for in any other way than cash is doubted. *McDaniel v. Harvey*, 51 Mo. App. 198. Certainly not authorized to issue stock except for money paid, labor done or property actually received. And worthless stock in an insolvent corporation is not so receivable. *Id.*

Corporate stock may be paid for by subscriber in property at a fair and honest calculation. *Foster v. Refining Co.*, 118 Mo. 238; s. c., 24 S. W. Rep. 63.

Fictitious issue of stock as fully paid up, held to be ultra vires and void. *Garrett v. Mining Co.*, 113 Mo. 330; s. c., 20 S. W. Rep. 965.

Where corporation undertakes, for a legal consideration, to issue shares to a party, the fact that consideration does not amount to full value of shares does not affect validity of transaction, where other party is seeking to enforce contract against corporation and no rights of creditors intervene. *Roll v. St. Louis Co.*, 52 Mo. App. 60.

A contractual license revocable only by consent or condition broken is property, and may be accepted by corporation in payment of subscription to stock. *Shepard v. Drake*, 61 Mo. App. 134.

Stock may be paid for in money, labor or property of any kind used in the business at a fair valuation, but a fictitious valuation will make shareholder liable to creditor of corporation pro tanto; this rule holds good whether over-valuation is result of fraud, mistake or bad judgment. *Id.*

Failure to certify amount of capital stock paid in will not invalidate increase of stock. *Hotel Co. v. Hunt*, 57 Mo. 126.

Under above section, and §§ 2517, 2519, and Const., art. XII, § 8, assignees taking stock issued as fully paid up, with knowledge that it was issued for worthless property, are liable to bona fide creditors, although there was no actual intent to defraud in issuing it. *Van Cleve v. Berkey*, 44 S. W. Rep. 743.]

§ 2500. The notice required by the preceding section shall be published at least once a week in some newspaper in the town, city or county in which said corporation is located, the first insertion to be not less than sixty days, the last to be not less than one nor more than six days, previous to the day on which such meeting shall be held; but if there be no newspaper published therein, then in some newspaper published in the next nearest county, and by posting up a printed hand-bill in the office of said company.

[Meetings to increase capital stock must be called by public notice. *State v. McGrath*, 56 Mo. 239.]

§ 2501. Upon the stock of any corporation being increased, as hereinbefore provided, the date and amount of such increase of stock shall be certified by the proper corporate officers of such corporation to the secretary

of State, who shall preserve and record said certificate in his office.

See Const., art. XII, § 8, and cross-references.

[Where corporation increases its capital stock on basis of property to capital already owned, the increase belongs to the then stockholder in proportion to his holding. *Knapp v. Publishers*, 127 Mo. 53; s. c., 29 S. W. Rep. 885. Where stock of corporation is increased for purpose of selling on basis of existing assets, old stockholders having prior right to purchase and like proportion of new shares. *Id.*

Preferred stock bearing interest absolutely is unauthorized, statutory provision for such stock being for a stated rate of dividend which should be payable only out of the net yearly income of each current year. *Winscott v. Invest. Co.*, 63 Mo. App. 367.]

§ 2502. The stock of every company formed under this article shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of the company; but no shares shall be transferred until all previous calls thereon shall have been fully paid in.

See § 2503. Stock is subject to attachment. § 540.

[The only effectual mode of transferring title to shares is by a transfer upon books of corporation. *White v. Salisbury*, 33 Mo. 150.

A transfer according to general law governing transfer of property is good between the parties, though it is not as against company. *Ins. Co. v. Goodfellow*, 9 Mo. 149.

Charter of corporation which provides that stock shall be assignable only on books of company, simply adopts rule applicable to transfer of corporation stock, with corollary that such assignment on books passes title. *Ins. Co. v. Able*, 48 Mo. 136.

Transfer of stock certificate will not, of itself, pass title to stock, although it gives an equity, and assignee can compel transfer on books, except as against bona fide purchaser, who has acquired title by such transfer. *Id.* Although purchaser of stock may insist, as a condition precedent to purchase of stock, that certificate be surrendered to company for cancellation, yet, if no such condition is insisted on, then when transfer is, in fact, made on books, such assignment will be sufficient, without surrender of certificate, to pass title. *Id.*

Any transfer in writing is valid against company, if, being notified, they refuse to allow it to be made according to by-laws. *Spring Co. v. Harris*, 20 Mo. 382. Assignment on books of company is sufficient without taking out new certificate in name of assignee. *Id.*

Where charter authorizes directors to make by-laws regulating transfer of stock, they may adopt a by-law prohibiting transfer of stock as long as owner is indebted to corporation. *Ins. Co. v. Goodfellow*, supra; *Bank v. Merchants, etc.*, 45 Mo. 513.

Word "indebted" when used in a charter or by-law restraining stockholder from transferring his stock while indebted to corporation applies to debts to become due as well as to those due, and to those in which stockholder is surety as well as to those in which he is principal. *Ins. Co. v. Goodfellow*, supra.

Power to regulate transfer does not include power to restrain same, or prescribe to whom they may be made; a corporation cannot prevent member from selling his stock even to an insolvent person. *Spring Co. v. Harris*, supra.

Transfer of stock effectual between parties, without registration in office of corporation, and binding on all parties if noted by officers according to usual method, no transfer-books being



## Certificates of stock; transfers — R. S., § 2502.

kept by them. *Haegle v. Mfg. Co.*, 29 Mo. App. 486.

Pledgee of certificate of stock which has printed thereon a by-law which provides that no transfer of stock shall be made while owner is indebted to corporation takes it with notice, and does not occupy position of an innocent purchaser. *State v. Nixon*, 25 Mo. App. 642.

Where order of probate court directed administrator to transfer stock to plaintiff in payment of distributive share in an estate, and plaintiff afterward refused to receive the stock and accepted other estate in lieu thereof, it is not error to instruct that plaintiff cannot recover in action against corporation to compel his recognition as a stockholder and for conversion of his interest in capital stock. *Haegle v. Mfg. Co.*, 29 Mo. App. 486.

Where breach of contract consists in failure to deliver certain stock in supposed corporation, measure of damages will be actual market value of such stock. *Deck v. Feld*, 38 Mo. App. 674.

Where stock is sold without stipulated price, law implies promise to pay market value; it is not necessary it should be subject of daily traffic in order to have a market value; enough if it was occasionally the subject of sale in community, so as to fix at different times a customary price. *Id.*

If corporation is never formed and stock never issued, and if it were issued it would be valueless, plaintiff can recover only nominal damages. *Gibson v. Pub. Co.*, 28 Mo. App. 450.

When parties have bought and dealt in stock, and received dividends thereon, for thirty years, as valid, objection to its validity is barred by laches. *Foster v. Refining Co.*, 118 Mo. 238; s. c., 24 S. W. Rep. 63. Stock is personal property. *Watson v. Printing Co.*, 56 Mo. App. 145. It is a species of incorporeal, intangible property, in the nature of a chose in action. *Vanstone v. Goodwin*, 42 Mo. App. 39.

While a certificate of stock is not a negotiable instrument, yet it partakes to a great extent of the qualities of a negotiable security. *Keller v. Mfg. Co.*, 43 Mo. App. 84. Upon being indorsed by the original holder named therein by signing blank power of attorney authorizing person therein named to cause it to be transferred on books, it passes from hand to hand by delivery very much as does a negotiable bond. *Id.* When it falls into hands of one who wishes to be admitted to rights of a stockholder, he inserts a name in blank power of attorney, and persons so empowered may demand of corporation a transfer on the books to present holder. *Id.*

Certificate of stock is an affirmation by corporation that person to whom it was issued is entitled to all rights, and subject to all liabilities, of a stockholder in respect of number of shares named, and that corporation will respect his rights, and rights of any one to whom he may transfer such share, by refusing to admit any new transferee to rights of shareholder except upon surrender of certificate. *Id.* But certificate is only the symbol; it is not the stock. *Id.*

Certificate is only evidence of title to stock. *Watson v. Woody*, 56 Mo. App. 145. It is a declaration in writing by officers of corporation as to who are entitled to participate in its benefits. *Id.* Not negotiable paper, in sense in which that term is applied to commercial notes, etc. *Id.* It differs from other evidences of title in that stock is considered as transferred when certificate is assigned. *Id.* Stock is personal property, and certificate is only evidence of title thereto. A misuse of terms designates such certificates as negotiable paper in sense of commercial paper. *Id.* Such stock, however, is considered transferred when certificate of transfer is signed. *Id.*

Where corporation issues certificate of stock which is transferable only on the books, and afterward, on representation of person to whom it was originally issued that it has been lost, issues another certificate, which latter is negotiated to an innocent holder, corporation incurs risk of a double liability in respect of the same shares. *Keller v. Mfg. Co.*, 43 Mo. App. 84. Unless second certificate shows on its face that it is a duplicate. *Id.*

A by-law prohibiting transfer of stock except by former assignment on books will not, in absence of constitutional or statutory prohibition, render invalid conveyance by transfer of stock certificate. *Wilson v. Ry. Co.*, 108 Mo. 588; s. c., 18 S. W. Rep. 286. Such transfer good against execution creditor of stockholder, who had no notice of transfer when execution was levied, but was notified before he purchased stock at execution sale. *Id.*

Directors not authorized to enact by-laws making it a condition of transferring stock that holder shall first have offered it for sale to directors, and shall have paid all his indebtedness to corporation. *Trust Co. v. Lumber Co.*, 118 Mo. 447; s. c., 24 S. W. Rep. 129. When no restriction placed by public law on transfer of stock, purchaser is not affected by any contractual restriction of which he had no notice. *Id.*

Where corporation enacts a by-law making transfers of stock subject to lien for any indebtedness of holder to corporation, and prescribes that such by-law shall be printed on all certificates as notice of existence of such lien, failure to print such condition on stock certificates considered waiver thereof as to subsequent purchaser. *Id.*

A holder of certificate indorsed by person named therein, who demands of corporation the transfer of stock to him and is refused, has two remedies, either an action against corporation for conversion, or suit in equity to compel corporation to issue new certificate to him and to admit him to rights of shareholders. *Keller v. Mfg. Co.*, 43 Mo. App. 84. Both remedies proceed on ground that holder of certificate is entitled to rights of shareholders, and that corporation denies this right. *Id.*

No opinion expressed as to which is entitled to have stock transferred to him, when there are bona fide transferees for value of two different certificates issued by corporation for same stock. *Id.*

At common law corporation has no lien on stock for an indebtedness to it by holder. *Brinkerhoff v. Lumber Co.*, 118 Mo. 447; s. c., 24 S. W. Rep. 129.

Corporation which has succeeded to all the rights of a partnership, whose bookkeeper had embezzled the firm assets, may charge bookkeeper's stock with his shortage which accrued before incorporation. *Bank v. Durfee*, 118 Mo. 431; s. c., 24 S. W. Rep. 133.

Where all stock is owned by three persons, an agreement by which two of them are to buy stock of third, to be paid for in part by proceeds of a note given by corporation, and remainder by notes of purchasers, which they agree between themselves shall be paid for out of earnings of company, is valid. *Schilling v. Schneider*, 110 Mo. 83. Such purchase is not one for benefit of corporation; nor was it purchased with funds of corporation. *Id.* Such sale passed title to stock to purchasers in proportions named in agreement itself without regard to respective holdings of the stock at time it was made. *Id.* Payment of notes out of earnings cannot be assailed by stockholders who inherit their stock from one of the parties, nor by those who became stockholders after payments were made, nor by stockholder who was president at time payments were made, and who consented to them. *Id.*

Where one, as purchaser, gives value on faith of certificate, authenticated by seal of corporation and signatures of proper officers, he may require corporation to transfer stock to him or respond in damages for default. *Watson v. Printing Co.*, 56 Mo. App. 145. No secret equities, fraud or misappropriation can be set up by corporation to prejudice or loss of pledgee or purchaser without notice. *Id.*

Measure of damages for conversion of stock, if it has no market value, is its actual value, which may be established by proof of its dividend earning capacity, or value of its assets, or by proof of individual sales of stock not made under compulsion. *Trust Co. v. Lumber Co.*, 118 Mo. 447; s. c., 24 S. W. Rep. 129. Market value is presumptively par value, in absence of evidence of actual sales. *Id.*

Value of property of corporation may be shown for purpose of showing value of its shares of stock. *Hewitt v. Steele*, 118 Mo. 463; s. c., 24 S. W. Rep. 440.

Bill in equity will lie to compel corporation to place on its stock-book, as owner, name of purchaser at execution sale of shares standing on books in name of execution defendant. *Smith v. Mining Co.*, 47 Mo. App. 409.

Action in equity will lie by a stockholder, who has lost his certificate of stock, to compel corporation, on execution of bond of indemnity, to issue to him certificate in lieu of that which has been lost, not containing words showing that it is a duplicate. *Keller v. Mfg. Co.*, 43 Mo. App. 84.

Placing new stock "to the credit of" a stockholder is sufficient to indicate an intent to pass title to him, as against the company. *Knapp v. Publishers*, 127 Mo. 53; s. c., 29 S. W. Rep. 885.

In the absence of evidence of market value of stock, its value may be established by showing its dividend earning capacity. *Greer v. Bank*, 128 Mo. 559; s. c., 30 S. W. Rep. 319. Shares of stock are included in term "goods, wares and merchandise," when. *Bernhardt v. Walls*, 29 Mo. App. 206.

As to legal inferences of transfer of stock, see *Lipurock v. R. R. Co.*, 61 Mo. 319; *Kahn v. Bank*, 10 id. 262. Equity will protect the claims of the holder of stock irregularly transferred. *Ins. Co. v. Sherwood*, 72 Mo. 461. A sale and delivery of stock passes title, though not made in conformity with by-laws. *O'Brien v. Cummings*, 13 Mo. App. 197.]

§ 2503. Every such corporation shall keep a book in which the transfer of shares of its stock shall be registered, and another book containing the names of its stockholders, which books shall at all times, during the usual hours of business, for thirty days previous to an election of directors, be open to the examination of the stockholders.

See § 2518. Statement of affairs to be kept. § 2774. Books to be kept open. § 2778. Records as evidence. § 2532. Penalty for failure to keep books, etc. Act of 1891, at p. 46. See note to § 2502.

[By-law providing for closing of transfer-books before an election, not understood as closing them against inspection by person duly authorized thereto, but only as limiting time for transfers of stock. *State v. Ry. Co.*, 29 Mo. App. 301.

Right of shareholder to inspect books not to be exercised to the detriment of interests of corporation and right of other shareholders. But right is clear within proper limits. *Id.*

Under above section stockholder entitled under reasonable regulations to inspect books of corporation, without disclosing purpose for which he desires to do so; and fact that information may be used for improper purposes is immaterial. *State v. Sportsman's Assn.*, 29 Mo. App. 326.

Right of stockholder to examine books and records of corporation, and to be informed of its condition, is a common-law right, and is not impaired by statute. *State v. Laughlin*, 53 Mo. App. 542. Statute requiring transfer-books to be opened for inspection for twenty days previous to election, not a limitation on stockholder's right of inspection. *Id.* Right of inspection of corporate books is not, either at common law or under the statute, dependent upon purpose of stockholder in exercise of right; and while it may be controlled by regulation, it cannot be regulated out of existence. *Id.*]

§ 2504. If any officer having charge of such books shall, upon the demand of a stockholder, refuse or neglect to exhibit and sub-

mit them to examination, he shall, for each offense, forfeit the sum of two hundred and fifty dollars.

See § 2518.

§ 2505. An annual meeting of shareholders for the election of directors shall be held by all joint-stock corporations on a day which each corporation shall fix by its by-laws; and if no day be so fixed, then on the second Monday in the month of January.

Meetings of shareholders. § 2484, and cross-references.

§ 2506. By-laws to direct the manner of taking the votes of stockholders on the question of increasing or diminishing the number of directors or trustees, of changing the corporate name, may be made by the directors of the corporation for the time being.

Power to make by-laws. § 2508, subd. 6.

§ 2507. No by-law of any such corporation regulating the election of its directors shall be valid unless it shall be made at least sixty days before the day appointed for the election to be held.

See § 2508, subd. 6, and cross-references.

§ 2508. (As amended March 31, 1893.) Every corporation, as such, has power:

1. To have succession by its corporate name for the period limited it in its charter, and when no period is limited, for twenty years.

Change of name. §§ 2497, 2508[7]. Name of expiring corporation may be adopted by successor. § 2538b.

[Construction of successive acts of incorporation as to duration of a succeeding corporation. *State v. Hannibal, etc., Co.*, 39 S. W. Rep. 910.

Change of name does not affect corporate rights. *Woodson v. Skinner*, 22 Mo. 13.]

2. To sue and be sued, complain and defend in any court of law or equity.

Attachment. § 540. Manner of commencing suits. §§ 2017-2026. Corporation may sue its members. § 2516. Execution may issue against stockholders. §§ 2517-2518. Suits against former stockholders. § 2519; see §§ 2520-2524. Writs of mandamus. § 2525. Summons, how served, etc. §§ 2526-2528. Suits, where commenced. § 2529. Notices. §§ 2530-2531. Evidence, proceedings against garnishees, etc. §§ 2532-2537. Foreign corporation may be sued. § 2538a. Jurisdiction of circuit court. §§ 2790-2792. Executions, how levied, etc. §§ 4911-4953. Quo warranto proceedings. §§ 7390-7395. Garnishment. § 5222.

[Action for slander, malicious prosecution or false imprisonment cannot be maintained against a corporation. *Childs v. Bank*, 17 Mo. 213. But it may sue for libel or slander to its business.



## Corporate powers; actions — R. S., § 2508.

*Academy v. Galser*, 125 Mo. 517; s. c., 28 S. W. Rep. 851. It is civilly liable for damages caused by trespass or tort of its agent, done at its command, in relation to a matter within scope of purposes of its existence. *Soulard v. St. Louis*, 36 Mo. 546. And both corporation and agent may be jointly liable. *Favorite v. Cottrill*, 62 Mo. App. 119.

President may appear and confess judgment. *Chamberlain v. Mining Co.*, 20 Mo. 96.

Consolidation of two corporations does not abate suit pending at time of consolidation. *Evans v. Ry. Co.*, 106 Mo. 594; s. c., 17 S. W. Rep. 489.

Suit regularly commenced is not affected by expiration of charter. *Lindell v. Benton*, 6 Mo. 361. Fact of forfeiture of charter cannot be set up as a defense. *Bank v. Garten*, 34 Mo. 119.

Directors are managing officers, and it is for them to say whether a given suit shall be prosecuted. *Hannerty v. Theater Co.*, 109 Mo. 297; s. c., 19 S. W. Rep. 82; *Albers v. Exchange*, 45 Mo. App. 206. There are, however, exceptions to the rule. A stockholder may sue in those cases where directors are guilty of a fraud or breach of trust, or proceeding ultra vires. *Id.*

Before a court of equity will open its doors to a stockholder individually, he must show that there is no other road to redress; and he does not show this until he shows that all remedies within corporation itself have been exhausted. *Bulkiey v. Iron Co.*, 77 Mo. 105; *Slattery v. Trans. Co.*, 91 Mo. 217; s. c., 4 S. W. Rep. 79; *Albers v. Exchange*, supra.

It is not always necessary, however, for such stockholder to make a request of the directors that they should sue themselves. *Hannerty v. Theater Co.*, supra. *Albers v. Exchange*, supra. It is sufficient to entitle stockholders to sue, to show that corporation is under control of directors who are liable for the loss. *Id.*

In many cases he must exhibit a state of facts from which the court can conclude that he has exhausted all reasonable efforts to induce corporate action; and his pleading must set forth in detail the efforts made by him. *Id.*

He must show that he has endeavored in good faith, through corporate meetings or otherwise, to induce the appropriate affirmative action on part of majority of stockholders. *Id.*

Where breaches of trust by directors constitute acts which are ultra vires, and which, for that reason, cannot be ratified by a majority of stockholders against assent of minority, a single stockholder may have relief in equity. *Id.* Even in such a case, it ought clearly to appear that he is not the only one who complained, or that, if he is the only one, the loss sustained by him is of a substantial character. *Id.*

Stockholder not, in any sense, a party to a judgment rendered against corporation to which he may belong, nor does such judgment bind his property. *Wilson v. Ry. Co.*, 108 Mo. 588; s. c., 18 S. W. Rep. 286.

Fact that plaintiff's stock is pledged as collateral will not prevent him from maintaining an action to protect his rights as a stockholder. *Fisher v. Patton*, 34 S. W. Rep. 1096.

Where special statute authorized defendant sued by corporation to plead in bar of suit forfeiture of charter, the repeal of that act takes away no vested rights; after such repeal the forfeiture can only be taken advantage of by a direct proceeding for the purpose. *Bank v. Snelling*, 35 Mo. 190. Validity of existence of corporation organized under general statutes cannot be assailed in collateral proceeding. *Haskell v. Worthington*, 94 Mo. 569; s. c., 7 S. W. Rep. 481.

Where de facto corporation institutes a suit to vest title to real estate in it, and pending suit becomes one de jure, decree entered in conformity to its prayer remains effectual until annulled by direct proceeding. *Keith v. Coal Co.*, 97 Mo. 196. Where defendant appeared, filed answer and defended as a corporation, and failed to deny under oath allegation that it was a corporation, and was shown to be in full exercise of corporate powers, it is estopped from denying, on appeal, that it was incorporated. *Ludowski v. Polish Soc.*, 29 Mo. App. 337; *Flynn v. Neosho*, 114 Mo. 567; s. c., 21 S. W. Rep. 903.

Where defendant, sued as corporation, files with answer, an affidavit stating that it is not a corporation, and no evidence is offered to the contrary, judgment for defendant must be affirmed. *White v. Odd Fellows*, 30 Mo. App. 682.

Corporate assets being trust fund, the forum for its enforcement is court of equity. *Foster v. Planing Mill*, 92 Mo. 79; s. c., 4 S. W. Rep. 260.

Where legislature grants to individuals charter of incorporation, upon performance of certain acts, party contracting with them in their corporate name is estopped from denying performance of the acts required. *Hantranck v. Bank*, 2 Mo. 159.

Where corporation is brought into court by service of summons on president as authorized by statute, it will be held to know what transpires in the suit, and where appeal bond has been executed for it by president, without affixing seal, and it is represented by counsel in appellate court after appeal was taken, it will, by its acquiescence, be held to have ratified act of president, and bond will be valid. *Campbell v. Pope*, 96 Mo. 468; s. c., 10 S. W. Rep. 187.

Proof that note in suit was transferred to plaintiff by agent duly authorized for that purpose by former corporation holder is sufficient to show title in plaintiff, without proof of corporate existence of such former holder. *Bank v. Dunklin*, 29 Mo. App. 442.

By-laws defining duties of officers of bank are admissible in an action against them for receiving deposits with knowledge of insolvency. *Speer v. Burlingame*, 61 Mo. App. 75.

In an action by a bank against two defendants as partners, any statement made by a director of a bank who had no connection with its active management, showing that he did not regard defendants as partners, is incompetent and its admission held error. *Bank v. Froman*, 129 Mo. 427; s. c., 31 S. W. Rep. 769.

In an action against a corporation for the conversion of stock of which plaintiff claimed to be the purchaser, admissions of the managing officers of defendant that the stock was worth par are admissible against defendant. *Brinkerhoff v. Lumber Co.*, 118 Mo. 447; s. c., 24 S. W. Rep. 129.

Mechanics' lien has its inception in a contract relation, and where a contract is between lienor and the promotor of a corporation, the lien paper is not admissible in evidence against corporation. *Davis v. Assn.*, 63 Mo. App. 477.

A corporation taking all the assets and assuming the liabilities of a firm held liable for its debts. *Schufeldt v. Smith*, 40 S. W. Rep. 887.

A general creditor of a corporation cannot maintain a creditor's suit to set aside conveyances before his claim has matured, nor until he has exhausted his remedy at law. *Bank v. Packing Co.*, 39 S. W. Rep. 71.]

### 3. To make and use a common seal and alter the same at pleasure.

[Common seal of corporation is to be taken as the only proper evidence of its acts, in all cases where a seal would be required, if instrument were executed by an individual. *Sandford v. Tremlett*, 42 Mo. 384.

When common seal of corporation is affixed to an instrument, and signatures of proper officers are proved, seal itself is prima facie evidence that it was affixed by proper authority. *Schools v. Risley*, 28 Mo. 415; *Chouquette v. Barada*, id. 491; *Musser v. Johnson*, 42 Mo. 74.

Seal must be proved to have been adopted by corporate authorities; if plaster or wax be used as seal, it must be proved that corporation in council agreed that it should be used in that particular case, and so ordered; it is not enough that majority of directors ratified the act after it was done. *Perry v. Price*, 1 Mo. 664.

If corporation has no common seal, it is sufficient if it adopt one for time being, when there is proof of authority of person acting for corporation to use it. *Sanford v. Tremlett*, supra.

Though corporation have seal, its agent may bind it by contract not under seal. *Buckley v. Briggs*, 30 Mo. 452.



## Corporate powers; to hold and convey property; officers — R. S., § 2508.

Corporation can only execute a bond with its seal countersigned by an officer entitled to fix its seal. *Land Co. v. Jeffries*, 40 Mo. App. 360.]

4. To hold, purchase, mortgage or otherwise convey such real and personal estate as the purposes of the corporation shall require, not exceeding the amount limited in its charter or the law creating it, and also to take, hold and convey such other property, real, personal or mixed, as shall be necessary or requisite for such corporation to acquire in order to obtain or secure the payment of any indebtedness or liability belonging to the corporation.

See Const., art. XII, § 7. Power to convey real estate. § 2399. Right of aliens to hold, restricted. Act of 1895, at p. 56. Conveyance, how made. § 2514. Restoration of gifts. Act of 1891, at p. 50.

[Every corporation in this State has power to hold, purchase and convey such real and personal estate as purposes of corporation require, not exceeding amount limited in charter. *Callaway v. Clark*, 32 Mo. 305.]

Where person by deed declares grantee to be a corporation, receives from it purchase price, binds himself and heirs to defend such corporation's title and delivers possession, such grantor and his heirs are estopped from denying corporate existence. As against those who have acquired possession under that deed. *Ragan v. McElroy*, 98 Mo. 349; s. c., 11 S. W. Rep. 735.

Conveyance made to trustees of corporation, without naming them, or any of them, vests title in corporation named in deed. *Coal Co. v. Bingham*, 97 Mo. 196; s. c., 10 S. W. Rep. 32.

Validity of title of corporation acquired by purchase that it may legally make cannot be determined in action of quo warranto. *State v. Road Co.*, 37 Mo. App. 496.

Whether a corporation, in accepting a deed to real estate, has exceeded its power, can only be questioned in a direct proceeding by the State for that purpose. *Ragan v. McElroy*, 98 Mo. 349; s. c., 11 S. W. Rep. 735.

A conveyance authorized at a meeting at which all shareholders are present and sign a written consent on the record is as effective as if authorized by directors. *Manhattan Co. v. Webster Co.*, 37 Mo. App. 145.

No one except State can assail a conveyance to or by a corporation de facto, on ground of lack of corporate existence. *Finch v. Ullman*, 105 Mo. 255; s. c., 16 S. W. Rep. 863. Where incorporation of hotel company is authorized by statute and company is formed de facto, and has acted as such, corporate existence cannot be called in question in a collateral proceeding. *Id.*

Capacity of corporation to take, and its power to convey property, differs in no essential particular from that of natural persons in like circumstances. It, therefore, has power to make a contract which may not be fully performed within term of its own existence. *State v. Gas Light Co.*, 102 Mo. 472; s. c., 14 S. W. Rep. 974; 15 id. 383.

In absence of any evidence to contrary, it will be presumed that corporation accepting a conveyance of land accepted it for a proper and legitimate purpose. *Ins. Co. v. Smith*, 117 Mo. 261; s. c., 22 S. W. Rep. 623.

A transfer of land by a de facto corporation is valid as against all persons except the State. *Crenshaw v. Ullman*, 113 Mo. 633; s. c., 20 S. W. Rep. 1077.

Transfer of corporate property cannot be impeached by one who was a director thereof at time of action complained of, and fails to take any action for nearly two years. *Feld v. Investment Co.*, 27 S. W. Rep. 635.

Where corporation becomes insolvent, it is the duty of directors to make an assignment for benefit of creditors. *Huse v. Ames*, 104 Mo. 91; s. c., 15 S. W. Rep. 965. Directors may authorize vice-president to execute such deed of assignment. *Id.* Resolutions of the board in this case are held sufficient to authorize vice-president to execute such instruments. *Id.*

Mortgage executed under seal of corporation, signed by its president, attested by its secretary, and duly acknowledged and recorded, and bonds and notes executed in like manner, are prima facie evidence of transfer of title and debt respectively in favor of a bona fide purchaser for value. *Brownell Co. v. Barnard*, 116 Mo. 667; s. c., 22 S. W. Rep. 503.

Settled law of this State is that capacity of corporation to take a conveyance of land cannot, after transaction is completed, be called in question in a collateral way, but only in a direct proceeding by the State. *Ins. Co. v. Smith*, 117 Mo. 621; s. c., 22 S. W. Rep. 623. Only exception to rule which prohibits collateral attack by private person on such conveyance, or on any other unauthorized action of corporation, is where such attack is authorized by express legislative permission. *Id.* Rule does not apply in behalf of corporation where rights which it seeks to hold outside of powers granted by its charter rests only in executory contract. *Id.*

A transfer of property by a corporation when insolvent, in payment of the individual debt of an officer, is fraudulent as against its creditors, though such officers own all its capital stock. *Hall v. Goodnight*, 37 S. W. Rep. 916.]

5. To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation.

See § 2491.

[Any act, representation or knowledge of its agent, officially done, made or acquired, is that of the corporation itself. *Bank v. Schaumburg*, 38 Mo. 228.]

Managing officer has power to engage professional services of an attorney without formal authorization by directors. *Bank v. Gilstrap*, 45 Mo. 419.

Acts of agents of corporation, within scope of their authority, will bind corporation, without proof of express authority to do the act. *University v. Jordan*, 29 Mo. 68; *R. R. Co. v. Winkler*, 33 id. 354.

Drafts signed by secretary of insurance company is not binding on company in absence of evidence of usage or by-law giving him authority to bind company. *Bank v. Hogan*, 47 Mo. 472.

If corporation ratify unauthorized acts of agent it is equivalent to previous authority; such ratification need not be by any formal vote or be authenticated by corporate seal. *Campbell v. Pope*, 96 Mo. 468; s. c., 10 S. W. Rep. 187; *Bank v. Bank*, 107 Mo. 133; s. c., 17 S. W. Rep. 664.

Before corporation can be said to have ratified unauthorized contract of agent by receiving the consideration, it must be proved that corporation, through proper officer, knew its terms and received money on that account. *Hyde v. Larkin*, 35 Mo. App. 365.

An attorney may be employed without formal resolution of directors. *Milling Co. v. Coquard*, 40 Mo. App. 40.

Corporation cannot by a by-law or any constituting instrument avoid liability for wrongful acts of officers or servants, done within scope of their agencies. *Sherman v. Printing Co.*, 29 Mo. App. 31.

Promoters of a corporation are not the agents and cannot bind corporation nor charge property to be acquired by it with a mechanic's lien. *Davis v. Assn.*, 63 Mo. App. 477.]

6. To make by-laws, not inconsistent with existing law, for the management of its

By-laws; change of name and number of directors; general powers — R. S., § 2508.

property, the regulation of its affairs and for the transfer of its stock.

By-laws for certain purposes, who may make. § 2506. Not valid, when. § 2507. Date of annual meeting fixed by. § 2505.

[By-laws must not be repugnant to charter. *Carr v. St. Louis*, 9 Mo. 191.

Corporation may amend its by-laws so as to change rights of stockholders as they existed before the amendment. *Schrack v. Building Co.*, 34 Mo. 423.

Suits for recovery of fines for breaches of by-laws may be brought before a justice, if amount sued for is within his jurisdiction. *Lindell v. Benton*, 6 Mo. 361.

Power to enact by-laws is in stockholders unless given to directors by charter or statute. *Albers v. Merchants' Exch.*, 39 Mo. App. 583. A by-law adopted at a meeting composed of all the stockholders cannot be avoided because meeting is a meeting of board of directors, and so designated on records. *State v. Printing Co.*, 25 Mo. App. 642.

Stockholders alone have power to adopt by-laws and board of directors has no such power. *Watson v. Printing Co.*, 56 Mo. App. 145.

Directors of the business corporation are only empowered to make by-laws directing manner of taking votes of stockholders on question of increasing or diminishing number of directors or trustees or of changing corporate name. *Trust Co. v. Lumber Co.*, 118 Mo. 447; s. c., 24 S. W. Rep. 129. All other by-laws must be enacted by the corporate body. *Id.*

Neither directors, nor company itself, has power to adopt a by-law restricting the right of a stockholder to convey his stock to any one until the directors had refused to purchase it. *Brinkerhoff-Farris Co. v. Lumber Co.*, 118 Mo. 447; s. c., 24 S. W. Rep. 129.

By-laws of a corporation, when properly adopted, are as binding on members of body as is a charter provision. *Hill v. Mining Co.*, 119 Mo. 9; s. c., 24 S. W. Rep. 223.]

7. To increase or diminish by a vote of its stockholders, cast as its by-laws may direct, the number of its directors or trustees to be not less than three nor more than thirteen; and may in like manner change its corporate name without in anywise affecting its rights, privileges or liabilities; such changes of name or number of directors or trustees shall take effect and be in force from the date at which the president or secretary of such corporation shall file with the secretary of State an affidavit setting forth the name adopted or the number of directors or trustees fixed, together with the date at which such change in name or number of directors or trustees was voted by the stockholders of such corporation. Any corporation may, at a meeting duly called and held, notice of such meeting first having been given in manner and in form as is provided in sections 2499 and 2500, Revised Statutes 1889, for increase of capital, reduce the par value of its shares of stock and correspondingly increase the number thereof, by a vote of a majority of the stock of the corporation: Provided, That no corporation shall engage in business other than that expressly authorized in its charter, or the law under which it may have been or may hereafter be organized.

See Const., art. XII, § 7, and cross-references. Corporation to change name, when. § 2497.

[Change of name does not affect corporate rights. *Woodson v. Skinner*, 22 Mo. 13.]

[**Powers in general.**—Corporations have only such powers as are specially given by their charters, or are necessary to carry into effect some specified power. *City v. Russell*, 9 Mo. 507; *Blair v. Ins. Co.*, 10 id. 559; *Western Assn. v. Kribben*, 48 id. 37; *Ruggles v. Collier*, 43 id. 353. And acts creating corporations are to be strictly construed. *Id.*

Only such resulting powers are implied as are obviously necessary to accomplish the express or principal power. *St. Louis v. Hempstead*, 4 Mo. 242.

It is a well-settled rule of construction of grants by legislature to corporations, that only such powers and rights can be exercised under them as are clearly comprehended within the words of the act, or derived therefrom by necessary implication, regard being had to the object under grant. Ambiguity or doubt arising out of terms used by legislature must be resolved in favor of public. *Carroll v. Campbell*, 108 Mo. 550; s. c., 17 S. W. Rep. 884.

State may impose conditions on a corporation which it cannot impose on individuals, and they have no power to transact any business except that authorized by their charter and the laws under which they are organized. *State v. Stone*, 118 Mo. 388; s. c., 24 S. W. Rep. 164.

Trading corporations cannot be bound by contracts wholly foreign to purpose for which they were established. *Welsh v. Brewing Co.*, 47 Mo. App. 608.

Where a grant of power is given, all the means necessary to effectuate the power passes as incident to the grant. *State v. Walbridge*, 119 Mo. 383; s. c., 24 S. W. Rep. 457.

Where a grant of power from legislature is relied on, the mode prescribed in that grant for doing any particular thing must be pursued according to law creating it. *R. R. Co. v. Marlon*, 36 Mo. 294.

Acts of corporation must be done by such officers or agents and in such manner as charter directs. *St. Louis v. Clemens*, 43 Mo. 395.

Corporations cannot go beyond powers granted them and must exercise such powers in a reasonable manner; but in judging of reasonableness, courts will not look closely into mere matters of judgment, where there may be ground for difference of opinion. *St. Louis v. Webber*, 44 Mo. 547.

Where corporation is not restrained by its charter, it may adopt all reasonable modes in the execution of its business which a natural person might adopt. *Henning v. Ins. Co.*, 47 Mo. 425.

Distinction between natural persons and corporations is, that while former may make any contract not prohibited by law or against public policy, latter can exercise no powers not expressly conferred on them by their charters. *Bank v. Young*, 37 Mo. 398.

Corporation created by laws of another State, where interest is not allowed at a higher rate than six per cent., may, upon loans in this State, charge rates of interest allowed by laws of this State. *Id.* Powers conferred by charter cannot be divested by legislature; yet, except so far as privileged by their charters, corporations are subject to general laws, and contracts made in violation of them are void. *Blair v. Ins. Co.*, supra.

Insurance company cannot engage in banking. *Id.* Corporation has power to make any contract authorized by its charter in a foreign government, unless such contract is prohibited by that government. *Id.*

Corporation created for mining and transportation of coal may purchase and use a steamboat for purpose of its business in transporting and delivering coal. *Callaway v. Clark*, 32 Mo. 305.

Corporation authorized by its charter "to buy, exchange, sell, mortgage, transfer or otherwise use its property," although not thereby authorized to do a general banking business, may loan its surplus funds on time, and has right to accept security for loan, follows as a necessary incident. *Assn. v. Kribben*, 48 Mo. 37.

Except as privileged by charter, corporations are subject to legislative action, and all contracts



made by them in violation of law are voidable or may be made void by legislative action. *Blair v. Ins. Co.*, supra.

Corporation may ratify contracts by subsequent assent. *Bonnell v. Express Co.*, 45 Mo. 422.

A provision in charter of corporation, prohibiting it from dealing in commercial paper, would not prevent it from receiving and selling notes given for sale of its lands. *Buckley v. Briggs*, 30 Mo. 452.

If corporation violates act to prevent illegal banking by receiving or passing bank notes of less denomination than five dollars, such violation may be pleaded in bar of any suit instituted by such corporation. *University v. Jordan*, 29 Mo. 68.

In matters of simple contract, execution of instrument so as to bind corporation will be inferred from general principles of law of agency. *Musser v. Johnson*, 42 Mo. 74.

Promoter of corporation cannot bind same by contract made in obtaining subscription before organization. But corporation may, after organization, ratify it and be estopped from denying its validity. *Joy v. Manion*, 28 Mo. App. 55.

A manufacturing or business corporation of this State can engage in no business not within scope of its purposes, as set forth in its articles. *Dairy Co. v. Mooney*, 41 Mo. App. 665.

A person contracting with a corporation may plead ultra vires as long as the contract has not been fully performed by the corporation. *Id.*

One whose rights are not invaded cannot complain that a corporation is acting ultra vires. Only stockholders or the State can complain. *Refining Co. v. Grain Elev.*, 101 Mo. 192; s. c., 13 S. W. Rep. 822.

Corporation authorized to hold real estate has, as a consequence, the power to contract for repairs to building thereon. *Ashenbroedel v. Finlay*, 53 Mo. App. 256.

Corporation, having by its charter power to handle, manufacture and sell beer, and to lease real estate proper for carrying on business, has power to lease a saloon stand, with view of introducing and selling its own beer. Fact that it sublet premises to another to sell its beer, as well as to keep a regular saloon where whiskey was also sold, will not vitiate the lease. *Welsh v. Brewing Co.*, 47 Mo. App. 608.

Wherever corporation goes for business it carries its charter, for that is the law of its existence, and is the same abroad as at home. *Lead Co. v. Reinhard*, 114 Mo. 218; s. c., 21 S. W. Rep. 488.

Fact that a railroad company in violation of State Constitution controls a coal company can only be complained of by the State; such question can only be collaterally raised in a suit for the specific performance of a contract. *Hill v. Mine Co.*, 119 Mo. 9; s. c., 24 S. W. Rep. 223.

A stockholder who receives benefits of a contract by his corporation cannot impeach transaction as ultra vires. *Feld v. Investment Co.*, 27 S. W. Rep. 635.

If it were ultra vires for a bank to negotiate water bonds, such transaction is not *malum in se*, can only be taken advantage of by State, and cashier through whom contract was made cannot set up ultra vires, to retain for himself profits of the transaction. *Bank v. Porter*, 52 Mo. App. 244.

While a trading corporation can only exercise those contractual powers which are expressly granted by its charter, or which are necessarily implied, it does not follow that all corporation contracts which are ultra vires are void. *Welsh v. Brewing Co.*, supra. To declare the ultra vires acts of a trading corporation void, it must be shown to be the intention of the charter not only to restrict business of corporation to certain things, but, in addition, to declare that when it exceeds those restrictions the act should be void. If such intention does not exist in charter, State alone can question such acts as ultra vires except where a contract is against public policy or good morals. *Id.*

Corporation cannot plead ultra vires against an act by it merely in excess of its charter authority, where consideration has been received by it and

transaction has been executed by the other party. *Lysaght v. Assn.*, 55 Mo. App. 538.

Though sale of stock by bank may be an abuse of its corporate powers or ultra vires, yet this act cannot be set up as a defense to an action on a note given to bank by purchaser of the stock. *Bank v. Hunt*, 7 Mo. App. 42; s. c., 16 Mo. 439.

Corporation which has received benefits under a contract made by it is, in absence of a statute prohibiting it from exercising powers thus assumed, or a public policy working such prohibition, estopped from alleging that contract is ultra vires. *Weyrich v. Lodge*, 47 Mo. App. 391.

Corporation, by omitting to perform a duty imposed by its charter, does not ipso facto cease to be a corporation, but exposes itself to being deprived of its corporate character and franchises by a proceeding against it of quo warranto on part of State. *Ford v. R. R. Co.*, 52 Mo. App. 439. Legislature possesses undoubted power to provide that corporation may lose its corporate existence, without intervention of courts, by an omission of duty or violation of its charter, or default as to imposed limitations. *Id.* And whether legislature intended so to provide depends upon language used in the statutes. *Id.*

Officers of a corporation may, with consent of insurer indorsed thereon, place a policy of insurance of its property for benefit of its creditors. *Suddath v. Gallagher*, 126 Mo. 393; s. c., 28 S. W. Rep. 880.

Persons associated to form a corporation, but who contract with third person in advance of such formation, may be held liable to the latter as partners. *Carpet Co. v. Crawford*, 127 Mo. 356; s. c., 30 S. W. Rep. 163.

Ratification by a corporation of an instrument made before its existence is equivalent to the execution of an original contract. *Id.*

Corporation is not bound by a contract of its promoters unless it is so provided by its charter, or unless on incorporation it ratifies it, or, knowing its terms, accepts some benefit from it. *Hill v. Gould*, 129 Mo. 106; s. c., 30 S. W. Rep. 181.

A trading corporation will be presumed to have the power, through its proper officers to borrow money for use in the prosecution of business to execute notes. *Hayward v. Book Co.*, 59 Mo. App. 453. Where person has bought about all the stock of a corporation and has been installed as manager with the understanding that the name should be changed and he elected president, which was done in a few days, and borrows money and executes note in the new name of the corporation, and interest of said note is paid to knowledge of corporation, such note becomes a binding obligation of corporation. *Id.* Fact that such de facto officer has used borrowed money in part payment of stock which he had purchased of former stockholders will not defeat a note given for such borrowed money where there is no complicity on the payee's part. *Id.*

Business corporation has no power to enter into a partnership, and, therefore, cannot be held liable as a member of the partnership by reason either of its having held itself out as one, or of its having undertaken to enter into the relation. *Bank v. Oliver*, 62 Mo. App. 390.]

§ 2509. The powers enumerated in the preceding section shall vest in every corporation that shall hereafter be created or organized, and any corporation, including those heretofore organized and now in existence under any general or special law of this State, may accept the provisions of the general laws of this State relating to corporations, by filing with the secretary of State a certificate of such acceptance, signed by its president and secretary, duly authorized by its board of directors and approved by a vote of three-fourths of its stockholders, at any meeting duly and legally called for that purpose — notice of



Quorum of directors; contracts; suits against officers—R. S., §§ 2510-2512.

such meeting first having been given in manner and form as provided in sections 2499 and 2500 of this article, or by three-fourths of the stockholders, in writing; and upon the filing of such certificate, the time of the existence of said corporation shall be extended for such period as was originally permissible to it, or as may be stated in its certificate of acceptance. But nothing herein contained shall extend or continue to any corporation organized or existing under a special law or charter any special privilege, immunity, franchises or exemptions not possessed by corporations organized under the general laws of this State; and any corporation organized or existing under special law or charter shall, by accepting or availing itself of the provisions of this section, be deemed and held to thereby waive and surrender any and all such special privileges, immunities, franchises and exemptions, and it shall be subject to all the duties and obligations of corporations under general laws of this State: Provided further, That the duration of such corporation shall not be continued as aforesaid, until such corporation shall pay into the State treasury fifty dollars for the first fifty thousand or less of the capital stock of the corporation, and a further sum of five dollars for every additional ten thousand dollars of its capital stock, as provided by law: Provided, That nothing in this section contained shall be construed to authorize the renewal, continuance or extension of the charter of any company engaged in the manufacture or sale of illuminating gas.

Pools and trusts prohibited. Act of 1891, at p. 47.

[A contract may be shown to be that of a corporation, though signed in the name of an individual. *Jones v. Williams*, 39 S. W. Rep. 486.]

A majority stockholder cannot bind the corporation by contract. *Id.*

An appointment by directors of a manager of a newspaper, the property of the corporation, held not in violation of Revised Statutes 1889, § 2508, requiring the business to be managed by directors. *Id.*]

§ 2510. When the corporate powers of any corporation are directed by its charter, or the provisions of this law, to be exercised by any particular body or number of persons, a majority of such body or persons, if it be not otherwise provided in the charter or law creating it, shall be a sufficient number to form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act.

See § 2490, cross-references.

[In order to bind it, acts of directors of a corporation must be done in their official capacity. *Barcus v. Plank-road*, 26 Mo. 102.]

§ 2511. Parol contracts may be binding upon corporations if made by an agent duly authorized by a corporate vote, or under the

general regulations of the corporation; and contracts may be implied on the part of such corporations from their corporate acts, or those of an agent whose powers are of a general character.

[Officers have power to employ attorneys, and authorization by board of directors is not necessary. *Bank v. Gilstrap*, 45 Mo. 419.]

Where one is employed for a corporation by one assuming to act in its behalf, and renders service according to agreement, with knowledge of its officers and without notice that contract is not recognized as valid, such corporation will be held to have ratified contract, and be compelled to pay for the service. *Holmes v. Board*, 81 Mo. 137.

Ratification by a corporation of the unauthorized act of its agent is equivalent to previous authorization. *Bank v. Fricke*, 75 Mo. 178.

Officers of corporation unless prohibited by charter may confer authority upon its agent to draw and execute bills of exchange on behalf of the company. No action in writing on part of board is necessary to vest such authority in agent. *Preston v. Lead Co.*, 51 Mo. 43.

Authority of chief officer to perform certain official acts may be proven by contemporaneous or subsequent evidence of special authority. *Ins. Co. v. Seminary*, 52 Mo. 480.

Authority of corporation to issue its promissory note need not be expressly given by its by-laws. *Bank v. Mining Co.*, 86 Mo. 125. Authority of agent may be implied, when. *Musser v. Johnson*, 42 Mo. 74; *Southgate v. R. R. Co.*, 61 id. 89; *Holmes v. Board*, supra.

Knowledge acquired by officers of corporation while in discharge of official duties is knowledge of corporation itself. *Bank v. Schaumburg*, 38 Mo. 228; *Haywood v. Ins. Co.*, 52 id. 181; *Nichols v. Larkin*, 79 id. 264. Act of agents not binding on corporation, when. *Bank v. Hogan*, 47 id. 472; *Fayles v. Ins. Co.*, 49 id. 380.

Though a corporation have a seal, its agents may bind it by unsealed contracts. *Preston v. Lead Co.*, 51 Mo. 43.

Stockholders may sue for the wrongful act of officers, when. *Slattery v. Trans. Co.*, 91 Mo. 217; s. c., 4 S. W. Rep. 79.]

§ 2512. In any proceeding brought to try the title to any office in any corporation organized under the laws of this State, or to test the validity of any election of director, trustee or other officer in any such corporation, if any defendant be a non-resident of this State, or have absconded from his usual place of abode in this State, or have concealed himself so that the ordinary process of law cannot be served upon him, service of process may be made upon him in the manner prescribed by sections 2022 and 2028 or by section 2029 of the Revised Statutes of Missouri. Where a suit has been instituted in this State by a citizen thereof against a non-resident director of any corporation of this State, for mismanagement or fraud in the discharge of his official duties, it shall be the duty of such non-resident director to enter his appearance in said suit after personal service on him as provided in case of a resident defendant by the laws of the State regulating civil practice, and failure of such director to enter his appearance as herein prescribed shall work a forfeiture of his office of director.

Quo warranto. § 7390.

§ 2513. Upon the dissolution of any corporation already created, or which may hereafter be created by the laws of this State, the president and directors or managers of the affairs of said corporation at the time of its dissolution, by whatever name they may be known in law, shall be trustees of such corporation, with full powers to settle the affairs, collect the outstanding debts and divide the moneys and other property among the stockholders, after paying the debts due and owing by such corporation at the time of its dissolution, as far as such money and property will enable them; to sue for and recover such debts and property by the name of the trustees of such corporation, describing it by its corporate name, and may be sued by the same; and such trustees shall be jointly and severally responsible to the creditors and stockholders of such corporation to the extent of its property and effects that shall have come into their hands.

[Sale by corporation of its property in good faith, for a valuable consideration, does not amount to dissolution of corporation. *Hill v. Fogg*, 41 Mo. 563.

Nor does it subject property sold to a trust for benefit of creditors of corporation. *Powell v. R. R. Co.*, 42 Mo. 63.

Corporation may be dissolved by surrender of its franchise; if corporation suffers acts to be done which have effect of destroying end and object for which it was created, this is equivalent to surrender of its rights. *Moore v. Whitcomb*, 48 Mo. 543.

Seizure and sale of railroad company under State lien extinguished that company, such seizure and sale destroying object for which corporation was instituted. Answers to questions. 37 Mo. 135; *Moore v. Whitcomb*, supra.

Where corporation is dissolved, court of equity will lay hold of assets for purpose of applying them to payment of creditors, as against others than bona fide creditors and purchasers. *Hill v. Fogg*, supra; *Powell v. R. R. Co.*, supra.

Legal proceedings regularly commenced against a corporation are not affected by expiration of charter. *Lindell v. Benton*, 6 Mo. 361.

In an action by a corporation, fact that it has forfeited its charter cannot be set up as a defense. *Bank v. Garten*, 34 Mo. 119.

When special statutes authorized a defendant sued by a corporation to plead in bar of suit forfeiture of charter, the repeal of that act takes away no vested rights; after such repeal the forfeiture can only be taken advantage of by a direct proceeding for the purpose. *Bank v. Shelling*, 35 Mo. 190.

Where dissolution of corporation sufficiently appears alunde, it is not necessary to obtain judgment dissolving same before proceeding against stockholder for unpaid stock. *Shickle v. Watts*, 94 Mo. 410; s. c., 7 S. W. Rep. 274.

Insolvency of a corporation and discontinuance of business does not deprive it of power to collect and enforce claims in its own name. *Milling Co. v. Coquard*, 40 Mo. App. 40.

Bill may be maintained to have court of equity take charge of assets of insolvent and dissolved corporation, and distribute it ratably among creditors putting their claims in judgment. *White v. Laud Co.*, 49 Mo. App. 450. A trust fund, like assets of an insolvent corporation, after payment of legitimate costs and expenses, to be distributed among creditors pro rata. Id.

Neither loss of all corporate property, nor a failure to hold regular meeting or to elect corporate officers, nor all combined, necessarily amount to a forfeiture of franchise of a corporation. *Kuehl v. Meyer*, 50 Mo. App. 648. But

when the objects of corporation have been entirely abandoned, or when it appears that power to resume business does not exist, then a legal dissolution may be declared. Id. Purely business and manufacturing corporations formed under general statutes, which are a species of business partnerships, are deemed dissolved when they cease to do business and have become divested of their property. *State v. Society*, 9 Mo. App. 114.

Dissolution of corporation will be presumed in favor of creditors, when it is shown that it has practically surrendered corporate rights, has ceased to do business and has transferred all its assets. *Bank v. Gallaher*, 43 Mo. App. 482.

If railway corporation does not begin construction of its road within two years, and within one year thereafter expended thereon not less than ten per cent. of capital stock, such failure ipso facto extinguishes its corporate powers and existence. *Ford v. R. R. Co.*, 52 Mo. App. 439.

It accomplishes not only dissolution of corporation, but divests president and directors of their powers as such, and invests them with specific powers enumerated in above section. Id.

Ordinary effect of consolidation of two or more companies into one is a dissolution of all of them, and creation of a new company. *Evans v. Ry. Co.*, 106 Mo. 594; s. c., 17 S. W. Rep. 489. Consolidation of one corporation with another does not abate suit pending at time of such consolidation. Id. Corporation may assign its property to preferred creditors just as individuals may do. *Forster v. Mill Co.*, 16 Mo. App. 150. This is true whether assignment be general or partial, if made in good faith and without fraud. Id.

When a corporation becomes insolvent, it is the duty of directors to make an assignment for benefit of creditors. *Huse v. Ames*, 104 Mo. 91; s. c., 15 S. W. Rep. 965.

Directors may, by resolution, authorize vice-president to execute such deed of assignment. Id.

Merely insolvency of corporation does not change its relation to its creditors. It may manage its affairs in the due course of business, as an individual might under same circumstances. *Forster v. Plaining Co.*, 16 Mo. App. 150; *Larrabee v. Bank*, 114 Mo. 592; s. c., 21 S. W. Rep. 747. It may do this so long as there is a fair and honest prospect of redeeming its fortunes, and it may pay its debts in regular course though some of its creditors are thereby deprived of their security. Id.

A petition of an insolvent corporation for the appointment of a receiver to manage and conduct its business so that its creditors cannot enforce their rights against it in the courts does not state cause of action either at law or in equity in which, as incident thereto, a receiver may be appointed, and such appointment when made is subject to collateral attack. *State v. Ross*, 122 Mo. 435; s. c., 25 S. W. Rep. 947. A creditor may obtain preference by attachment over other creditors of an insolvent corporation although advised so to do by a director of corporation. *La Grange Co. v. Bank*, 122 Mo. 154; s. c., 26 S. W. Rep. 710.

A court of equity taking charge of an insolvent for the purpose of winding it up will respect liens and preferences already acquired against its assets. Id.

Corporation in failing circumstances may prefer one creditor to another in discharging its obligations, if such preference is made in good faith while property of company remains in its possession and unaffected by liens or process of law. *Alberger v. Bank*, 123 Mo. 313; s. c., 27 S. W. Rep. 657; *Slavens v. Cook*, 128 Mo. 341; s. c., 30 S. W. Rep. 1025; *Milling Co. v. Ziegler-Zaiss Co.*, 128 Mo. 473; s. c., 31 S. W. Rep. 28.

And an execution of a general assignment of same property will not invalidate the preference. Id.

Bona fide creditors of such corporation, who are not stockholders or directors therein, are not precluded from taking security for their claim, though notes held by them against corporation were also indorsed by some of the directors individually. Id.

Where corporation becomes insolvent its assets are a trust fund, to be preserved by its officers



## Conveyance of lands; dividends; execution against stockholders — R. S., §§ 2514-2517.

for benefit of creditors. *Suddath v. Gallagher*, 126 Mo. 393; s. c., 28 S. W. Rep. 880. Directors cannot, in equity, after such insolvency, use such assets for their own advantage. *Id.*

Property of corporation is held in trust for creditors and stockholders and its conversion by its officers to their private use is fraudulent as to creditors. *Dunham v. Hahn*, 127 Mo. 439; s. c., 30 S. W. Rep. 134.

A corporation which has become insolvent but still retains control of its property does not hold it as a trust fund for benefit of all its creditors, but may, in good faith, transfer it so as to give preference among them. *Meyer v. Chair Co.*, 130 Mo. 188.

Lien of creditor of an insolvent corporation upon its assets in hands of others is purely equitable and enforceable only in an equitable proceeding. *Beyer v. Trust Co.*, 63 Mo. App. 521.

Insolvent corporation may, in good faith, dispose of its property so as to pay one creditor in preference to others. *Meyer v. Chair Co.*, 32 S. W. Rep. 300.

Chattel mortgages made separate from a general assignment, held valid preference. *Callihan v. Powers*, 34 S. W. Rep. 848. Section 2513 cited. *Thomas v. Ramsey*, 47 Mo. App. 94.]

§ 2514. It shall be lawful for any corporation to convey lands by deed, sealed with the common seal of said corporation, and signed by the president, vice-president or the presiding member or trustee of said corporation; and such deed, when acknowledged by such officer to be the act of the corporation, or proved in the usual form prescribed for other conveyances for lands, shall be recorded in the recorder's office of the county where the land lies, in like manner with other deeds.

See § 2508, subd. 4, and cross-references; § 2399, and note.

[A deed which professes to convey to a corporation by name which has no valid existence is a nullity and passes no title to anyone. *Douthitt v. Stinson*, 63 Mo. 268.

Above section cited. *Thomas v. Ramsey*, 47 Mo. App. 94.]

§ 2515. If the directors of any corporation shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be thereafter contracted as long as they shall respectively continue in office: Provided, That the amount for which they shall be liable shall not exceed the amount of such dividend, and that if any of the directors shall be absent at the time of making the dividend; or shall object thereto, and shall file their objection, in writing, with the clerk or other officer of the corporation having charge of the books, they shall be exempted from the said liability.

Dividends may be declared, when. § 2773.

[Directors not liable unless indebtedness existing at any one time exceeds stock paid in. *Kritzer v. Woodson*, 19 Mo. 327.

Debts for which directors are liable are those voluntarily created by them, and does not include

judgment for damages caused by negligence of agents. *Cable v. Gaty*, 34 Mo. 573.]

§ 2516. All bodies corporate, by any suit at law in any court in this State, may sue for, recover and receive from their respective members all arrears or other debts, dues and other demands which now are or hereafter may be owing to them, in like mode, manner and form as they might sue for, recover and receive the same from any person who might not be one of their body, any law, usage or custom to the contrary thereof notwithstanding.

See Const., art. XII, §§ 8 and 9, and cross-references.

[Addition of the words "of St. Louis" to the name of a corporation after organization, no defense to an action on subscription. *Haskell v. Worthington*, 94 Mo. 560; s. c., 7 S. W. Rep. 481. No defense to action on stock subscription by company organized to carry on business contemplated in subscription, and engaged in that business only, that it might, under act of incorporation, have carried on other business. *Id.* No defense to same that defendant was induced to subscribe by a false representation that certain friends had agreed to take stock. *Id.*

Where corporation incorporated under law requiring amount of stock to be stated in certificate of incorporation enters business with less capital stock subscribed than amount thus stated, a subscriber, who is not estopped from making such, cannot be held to his subscription. *Id.*]

§ 2517. If any execution shall have been issued against any corporation, and there cannot be found any property or effects whereon to levy the same, then such execution may be issued against any of the stockholders to the extent of the amount of the unpaid balance of such stock by him or her owned: Provided, always, That no execution shall issue against any stockholder except upon an order of the court in which the action, suit or other proceedings shall have been brought or instituted, made upon motion in open court, after sufficient notice, in writing, to the person sought to be charged; and, upon such motion, such court may order execution to issue accordingly; And provided further, That no stockholder shall be individually liable in any amount over and above the amount of stock owned.

See Const., art. XII, § 9, notes and cross-references.

[Liability attaches to the actual stockholders when execution is issued, not to those who were stockholders when debt was contracted and have transferred their stock in good faith to responsible parties. *McClaren v. Francis*, 43 Mo. 452. Remedy against corporation must be exhausted and proved ineffectual before resort can be had to stockholder. *Id.* Stockholder's liability continues so long as certificate stands in his name on books of corporation. *Id.*

Claim against corporation for damages for loss of steamboat through negligence of its agents is not a debt of corporation for which stockholders are liable under statute. *Cabel v. McCune*, 26 Mo. 371.

Stockholders cannot, by selling, without company's consent, to an insolvent, avoid liability to



creditors of corporation for debts contracted during his real ownership. *Spring Co. v. Harris*, 20 Mo. 382; *McClaren v. Franciscus*, supra; *Savings Inst. v. Jackson*, etc., *Kink*, 52 Mo. 557.

Creditor's bill may be maintained in equity, against stockholders who have not paid up their subscriptions, to satisfy debts of corporation, notwithstanding statute furnishing other remedies; no defense in such suits that stock is payable upon call and no call has been made. *Bank v. Bank*, 107 Mo. 133; s. c., 17 S. W. Rep. 664; *Ford v. R. R. Co.*, 52 Mo. App. 439.

Corporation has no power to issue stock at less than its par value, and one taking such shares is liable in a proceeding by creditors to make good the difference between their par value and what he actually gives for them. *Meisenbach v. Southern Co.*, 45 Mo. App. 232. If an exception to the rule is claimed in any particular case, party claiming it must cite a statute authorizing corporation so to deal with its shares. *Id.*

Release from president or directors of a corporation of stockholder's liability on unpaid subscription cannot affect right given to judgment creditor of corporation by above section. *Nichols v. Stevens*, 25 S. W. Rep. 578.

Certificate of stock is only one of the evidences of title of shareholder, and an issue of one is not necessary for purpose of charging him with liability of a shareholder in favor of a creditor. *Kimball v. Davis*, 52 Mo. App. 194.

Notice required by above section to a person sought to be charged on execution as a stockholder of an insolvent corporation must be a personal notice, and must be served within this State. *Wilson v. Ry. Co.*, 108 Mo. 588; s. c., 18 S. W. Rep. 286. If served outside of this State it is a nullity. This would be the case, even if such service was expressly authorized by statute. *Id.*

In an action under above section to subject stockholder's liability for unpaid stock subscription to the payment of a judgment against corporation, such judgment cannot be collaterally attacked by setting up defenses properly pleadable in the original action resulting in the judgment. *Nichols v. Stevens*, supra.

Stock-book held to be admissible in evidence in such a proceeding, not to show that person proceeded against was a stockholder of corporation, but that appearing aliunde, for the purpose of showing that he appeared as such stockholder on books of corporation and was proper person to proceed against. *Id.*

When creditor proceeds by motion under statute against shareholder of corporation, whose shares have not been paid in full, judgments should not exceed liability of shareholders on such shares, exclusive of interest, though it will carry interest from date of its rendition. *Coquard v. Prendergast*, 47 Mo. App. 243.

Remedy by garnishment by stockholders who have not paid par value of their stock is only available to creditor, where call has been made by directors, so that something is presently due from stockholders for which company could itself sue. *Leucke v. Treadway*, 45 Mo. App. 507.

A proceeding by motion under the statute against a stockholder of a corporation is not an independent action, it is a proceeding in the case, in which judgment against corporation was recovered, in such sense as enables the court to take in it judicial notice of the judgment. *Ollesheimer v. Mfg. Co.*, 44 Mo. App. 172.

Notwithstanding such proceeding is said to be auxiliary to main action, yet it is an independent and original action so far as the stockholders are concerned. *Erskine v. Loewenstein*, 82 Mo. 301; *Wilson v. Ry. Co.*, 108 Mo. 588; s. c., 18 S. W. Rep. 286. And motion will lie only in a case where personal service of notice can be had on the stockholder within the jurisdiction. *Id.*

One who is owner of stock at date of return of execution against corporation is liable for all debts of insolvent corporation, to extent of his stock, regardless of when such debts accrued. *Bagley v. Tyler*, 43 Mo. App. 195. Where statute provides "if any execution shall have been issued against the corporation and no property found, the shareholder's liability is fixed," the bringing of an action in courts of one of the places where

corporation was authorized to do business, an issue of execution from such court is sufficient. Creditor not compelled to bring action in another jurisdiction, or to take out a roving execution. *Id.*

In a proceeding by a motion for execution against a stockholder, fact that no certificate was ever issued to the defendant is immaterial. *Ollesheimer v. Mfg. Co.*, supra.

In absence of fraud or collusion, a judgment against a corporation is conclusive evidence of liability of a stockholder in a proceeding against the latter under the statute to enforce by execution payment of remainder due and unpaid on a stock subscription. *Nichols v. Stevens*, 123 Mo. 96; s. c., 25 S. W. Rep. 578; 27 *id.* 613.

Judgment by default against a corporation is as conclusive against stockholders as when entered after protest and trial. *Id.* Fraud to subject judgment, in such cases, to attack must be actual fraud as distinguished from judgment obtained on false evidence or a forged instrument. *Id.*

Where defense of fraud is interposed, answer must state facts constituting fraud. *Id.* Where one incurs liability as a stockholder, neither president nor directors can relieve the liability to prejudice of creditors. *Id.* A motion under above section, for execution against a stockholder for unpaid subscriptions, when sufficiently comprehensive, will be treated as a petition, and where no exceptions are saved to its amendment, and defendant pleads to it and goes to trial thereon, such amendment cannot be objected to in supreme court on ground of a change of cause of action. *Id.*

When corporation has issued stock as fully paid up, it cannot afterward assert the contrary, though only a small portion of value was, in fact, paid. *Hill v. Mining Co.*, 124 Mo. 153; s. c., 25 S. W. Rep. 926; 32 *id.* 111. A stockholder who receives stock at less than its par value does so under an implied agreement, that when necessity arises and amount required is ascertained, he will make such additional payment as the satisfaction of the claims of creditors will require. *Id.* A voluntary agreement among stockholders to pay a certain per cent. on unpaid stock, for satisfaction of claims of creditors, will inure to benefit of, and can be enforced by, corporation on same principle which authorizes it to enforce a valid agreement to subscribe for stock, made before organization is effected. *Id.* Voluntary surrender of stock by holder will be effectual and releases withdrawing member from liability for debts thereafter created. *Id.*

Officers who issue to themselves stock, without paying anything therefor, or at an under-valuation, may be compelled to account for the value of the stock actually received. *Id.*

Court of equity will compel delinquent shareholders to contribute their ratable proportion to discharge of corporate debt. *Ford v. R. R. Co.*, 52 Mo. App. 439; *Lead Co. v. Reinhard*, 114 Mo. 218; s. c., 21 S. W. Rep. 488.

Unpaid stock subscriptions belong to creditors of a dissolved corporation to the extent of their claims against it. *Bank v. Gallaher*, 43 Mo. App. 482.

Capital stock, including both that paid in and unpaid subscriptions, is a trust fund pledged for the payment of debts of corporation. *Ramsey v. Mfg. Co.*, 116 Mo. 313; s. c., 22 S. W. Rep. 719.

In a suit by a judgment creditor of corporation against stockholder to subject to payment of its debt the stockholder's liability for the remainder unpaid on his stock subscription, stockholder may set off any demand he may have against corporation, though petition charges that suit is brought on behalf of plaintiff and such other creditors as may come in, it not appearing that any other creditor joined in the proceeding. *Savings Bank v. Bank*, 130 Mo. 155. Such proceeding is merely a race between creditors and not one to reach a trust fund for benefit of all the creditors of insolvent corporation. *Id.* Judgment in favor of an insolvent corporation against a stockholder, on account of unpaid stock, rendered in a proceeding under above section, is a bar to any equal-

## Action against stockholders on dissolution; review of elections — R. S., §§ 2518-2522.

table action by same plaintiff against same defendant for same cause. *Id.*

Payment by a stockholder of such corporation of remainder due on his stock subscription to creditors of corporation in a proceeding under said section constitutes a defense to an equitable suit by other creditors of corporation against him for their demands. *Id.*

Rights of stockholder who has paid corporate debts to enforce contribution against other stockholders. *Guerney v. Moore*, 32 S. W. Rep. 1132.

In an action to charge defendant as stockholder to extent of an alleged unpaid subscription, where stock was received in payment of property to knowledge of plaintiff, held, that the latter was estopped to claim that it was not fully paid. *Woolfolk v. January*, 33 S. W. Rep. 432.

Stock of corporation may be paid in property or services. *Id.*

Proceeding under above section. *Wells v. Mfg. Co.*, 54 Mo. App. 46; *Hauser v. Thompson*, 56 *id.* 87; *Sears v. Loan Co.*, *id.* 126.]

§ 2518. The clerk or other officer having charge of the books of any corporation, on demand of any officer holding any execution against the same, shall furnish the officer with the names, places of residence, so far as to him known, and the amount of liability of every person liable as aforesaid.

See § 2508, subd. 2, and cross-references. Books to be kept by corporation. § 2503. Same. § 2778.

[Above section construed. *Mercantile Co. v. Bettles*, 58 Mo. App. 388.]

§ 2519. If any company formed under this chapter dissolve, leaving debts unpaid, suits may be brought against any person or persons who were stockholders at the time of such dissolution, without joining the company in such suit; and if judgment be rendered and execution satisfied, the defendant or defendants may sue all who were stockholders at the time of the dissolution, for the recovery of the portion of such debt for which they were liable, and the execution upon the judgment shall direct the collection to be made from the property of each stockholder respectively; and if any number of stockholders, defendants in the case, shall not have property enough to satisfy his or their portion of the execution, then the amount of deficiency shall be divided equally amongst all the remaining stockholders, and collections made accordingly, deducting from the amount a sum in proportion to the amount of such stock owned by the plaintiff at the time the company dissolved.

See Const., art. XII, § 9, notes and cross-references.

[Actions brought under above section are not suits in equity, but actions at law. *Bank v. Galaher*, 43 Mo. App. 482.

The section construed. *Ford v. Ry. Co.*, 52 Mo. App. 452; *Couquard v. Prendergast*, 47 *id.* 254.

Above section was intended to give to creditor of corporation which had dissolved before judgment had been rendered against it a similar remedy against stockholders to that given by section 2517 to creditors of a live corporation having a judgment against it. *Sears v. Loan Co.*, 56 Mo. App. 122.

Where the affairs of a corporation are in hands of a court and officers neglect to make a call on unpaid subscriptions, court may make the call in interest of creditors, though stockholders not parties to suit. *Washington v. Bank*, 107 Mo. 133; s. c., 17 S. W. Rep. 644. Call upon unpaid stock is not essential in foregoing case, nor is a call necessary when creditor brings the suit directly under above section. *Id.*]

§ 2520. If any person shall conceive himself aggrieved by an election or any proceeding concerning an election of directors or officers in any such corporation, he may apply to the circuit court for redress, giving a reasonable notice of his intended application to the party to be affected thereby. Service of such notice shall be deemed sufficient, if delivered to the person in charge of the chief office of the corporation ten days before the hearing by the court.

See § 2508, subd. 2, and cross-references.

[Mandamus is proper remedy to compel canvassers of votes cast at election of directors to perform a duty imposed on them by law, nor is right to resort to this remedy withdrawn by our present statutes. *State v. McGann*, 64 Mo. App. 225.

Stockholder may, while meeting for election of directors is still in progress, change his vote previously cast, though result of election is thereby changed, if he act with such publicity that no undue advantage is thereby taken over other stockholders. This does not mean that stockholder may make any number of changes. *Id.*

Section applied. *Tomlin v. Bank*, 52 Mo. App. 433.]

§ 2521. It shall be the duty of the circuit court, upon such application, to proceed forthwith, in a summary way, to hear the proofs and allegations of the parties, or otherwise to inquire into a cause of complaint, and thereupon to make such order and grant such relief as the circumstances and justice of the case shall seem to require. If the election complained of shall be set aside, the court may order a new election, at such time and place as they shall appoint.

See § 2520, and note.

[In proceeding under above sections to inquire into election of directors, where report of inspectors show they have followed the law, and the wrong is in the organization of directory in recognizing as a director A., not elected, instead of B., who was elected, election should not be set aside, but court should oust A. and seat B., unless something transpired at election which prevented votes being tendered in accord with free will of voting stockholders. *Tomlin v. Bank*, 52 Mo. App. 430.]

§ 2522. The circuit court, if they cannot otherwise arrive at a satisfactory result, may order an issue between the parties to be made up, in such manner and form, and to be tried in such court, as they shall select; or may permit or direct the attorney-general to file an information in the nature of a quo warranto, if the case be one in which that proceeding would be competent and effectual.



§ 2523. If any such issue shall be ordered, or information permitted or directed to be filed, it shall be the duty of the circuit court to make such further orders in relation to the time and mode of pleading, the examination of witnesses or the parties, the production of books and papers, and the time and place of trial or hearing, as shall, in their judgment, be effectual for expediting the proceedings, saving expense to the parties, and causing a final determination to be had with as little delay as the nature of the controversy will permit; and the court may adjudge the costs according to equity.

See § 2508, subd. 2, and cross-references.

§ 2524. The right of appeal from or writ of error to the circuit court shall not authorize a supersedeas in any case of mandamus brought by a stockholder to enforce his right of inspection of the corporate books, or to enforce any common law or statutory right in connection with the corporate elections and meetings.

See § 2508, subd. 2, and cross-references.

[See *State v. Ry. Co.*, 29 Mo. App. 301.]

§ 2525. Writs of mandamus shall be served on private corporations in the same manner as writs of summons may be served on such corporations in civil cases, and when a peremptory writ of mandamus shall have been issued to a private corporation, and the same shall not have been obeyed in whole or in part within the time prescribed in such writ, the court or judge may, upon application by the plaintiff, besides and in addition to or instead of proceeding against the disobedient party by attachment, fine such corporation in any sum whatsoever, and appoint a receiver and direct that he take possession of and preserve, control and manage all the property, rights, privileges, franchises and business of such corporation, and that he proceed to do the act or acts required to be done by such peremptory writ of mandamus, at the expense of such corporation; and upon such act or acts being done, the amount of such expenses, together with reasonable compensation to such receiver for his services, shall be ascertained by the court or judge, either by writ of inquiry or by reference to a master, as the court or judge may order; and the court or judge may order payment of the amount of such expense, compensation, fine and costs out of any moneys which may be in the hands of such receiver, and if there be insufficient funds in his hands to pay the full amount thereof, payment of the residue may be enforced by execution against all the property, rights and privileges of such corporation of every kind and description whatsoever, in like manner as in other civil cases, and said receiver shall be required

to give bond, conditioned for the faithful performance of his duties, in such sum and with such security as the court or judge may direct, and expenses, compensation and costs shall first be paid in full before anything shall be paid on account of such fine. All fines collected under the provisions of this section shall be paid into the State treasury, and shall constitute a part of the school fund of the State.

See § 2508, subd. 2, and cross-references.

§ 2526. In all actions which may be instituted against any corporation or incorporated company, it shall be sufficient to issue a summons, commanding the corporation, by their corporate name, to appear and answer the action; which summons shall be directed as provided by this chapter, and returnable in like manner, and subject to the same rules and regulations as the like process in case of individuals.

See § 2508, subd. 2, and cross-references.

[Section construed. *Proctor v. Ry. Co.*, 42 Mo. App. 133.]

§ 2527. When any such summons shall be issued against any incorporated company, service on the president or other chief officer of such company, or, in his absence, by leaving a copy thereof at any business office of said company with the person having charge thereof, shall be deemed a sufficient service; and if the corporation have no business office in the county where suit is brought, or if no person shall be found in charge thereof, and the president or chief officer cannot be found in such county, a summons shall be issued, directed to the sheriff of any county in this State where the president or chief officer of such company may reside or be found, or where any office or place of business may be kept of such company, and the service thereof shall be the same as above.

[Process on corporations, how served and returned. *Dixon v. R. R. Co.*, 31 Mo. 409; *Howen v. R. R. Co.*, 64 id. 561. How executed. *Mikel v. Ry. Co.*, 54 Mo. 145; *Mangold v. Dooley*, 89 id. 111; s. c., 1 S. W. Rep. 126; *State v. O'Neill*, 4 Mo. App. 221. On railroad companies. *Smavens v. R. R. Co.*, 51 Mo. 308; *Howen v. R. R. Co.*, supra; *Farmer v. Ry. Co.*, 19 Mo. App. 250. Above section construed. *Proctor v. Ry. Co.*, 42 Mo. App. 133; *Grimm v. Investment Co.*, 55 id. 460.]

§ 2528. On the return of such summons, served as aforesaid, the officer serving the same shall express in his return on whom, how and when the same had been executed, and if not on the chief officer, he shall express the absence of such officer, or that he cannot be found.

§ 2529. Suits against corporations shall be commenced either in the county where the cause of action accrued, or in any county where such corporations shall have or



Service of notices, etc.; fieri facias against corporations; payment, etc.—R. S., §§ 2530-2538a.

usually keep an office or agent for the transaction of their usual and customary business.

See § 2508, subd. 2, and cross-references.

[Corporation cannot be sued against its consent in county where cause of action did not accrue and where it has no agent. *Roberts v. Ins. Co.*, 26 Mo. App. 92.]

Suits against corporations may be brought, where. *Mikel v. Ry. Co.*, 54 Mo. 145; *Kippstein v. Ins. Co.*, 57 id. 86.]

§ 2530. All notices, orders and rules required to be served in the progress of any cause shall be served in like manner as in other civil cases.

See § 2508, subd. 2, and cross-references.

§ 2531. In case the sheriff or other officer shall return any summons not served, and it shall be made to appear to the court that process cannot be served, the court, or the clerk thereof in vacation, shall make an order directing the defendant to be notified of the commencement of the suit by publication, in the same manner as is now provided by law for the notification of non-residents in civil cases.

See § 2508, subd. 2, and cross-references.

§ 2532. The records of any company incorporated under the provisions of this chapter, or copies thereof, duly authenticated by the signature of the president and secretary of such company, under the corporate seal thereof, shall be competent evidence in any suit to which such company may be a party.

See § 2508, subd. 2, and cross-references. Books to be kept. § 2503.

[Acts of corporation may be generally shown as evidence like acts of individual, but this is where there is no record or one bearing its incompleteness on its face; in other cases, record should prevail, as where it purports to give action in detail. *Mill Co. v. Bennett*, 39 Mo. App. 460.]

§ 2533. The process upon a judgment against any corporation shall be a fieri facias, which the sheriff or other officer shall levy on the moneys, goods and chattels, lands and tenements of such corporation, and proceed thereon as in civil cases.

See § 2508, subd. 2, and cross-references.

§ 2534. If a sufficient sum be not made to satisfy such judgment and costs, other writs of execution may be issued as aforesaid from time to time, until the whole is satisfied.

§ 2535. Proceedings against garnishees under the provisions of this chapter shall be the same as against the garnishees summoned in the case of an original attachment;

but no judgment shall be rendered against him for any debt to become due at a future day, until after the same shall become due.

See § 2508, subd. 2, and cross-references.

§ 2536. For all moneys paid by any garnishee under this chapter, he shall have credit against the corporation to whom it was due.

§ 2537. If any moneys remain in the hands of the officer after satisfying the judgment and all costs, he shall pay the same to the corporation or its order.

§ 2538. (As amended April 1, 1895.) All corporations shall make payment to their employes and other operatives, of wages due for all labor and services performed by them, within three months next preceding a demand made therefor, not exceeding one hundred dollars, in preference to any other claim, debts or demands whatsoever, not secured by specific liens on property; and such priority of payment may be enforced by civil action. Payment of wages shall be made on or before the fifteenth day of each month for the full amount of all wages earned previous to the first day of that month, with interest at six per centum. If not paid, to be added to the amount of said wages when paid or recovered by suit. All debts due employes or operatives for wages of their labor shall have priority of payment from the money and assets of the corporation in the hands of officers or agents, or any receiver or assignee, over every other claim not specifically secured. Every corporation, officer, agent, receiver, assignee, or person holding money or assets, refusing to recognize the priority of employes' claims, shall be liable to such employes for the amount of all loss and damages occasioned by his unlawfully withholding the money.

Employes preferred creditors. § 4911. Rights of workmen protected. Act of 1893, at p. 54. Payment of wages provided for. Act of 1895, at p. 57. Reduction of wages. § 2539.

[Where president voluntarily pays employes of corporation with his own money, in absence of agreement to that effect, he is not subrogated to their rights of a prior lien under above section in case of its insolvency. *Suddath v. Gallagher*, 126 Mo. 393; s. c., 28 S. W. Rep. 880.]

§ 2538a. Any corporation incorporated by any other State or country, and having property in this State, shall be liable to be sued, and the property of the same shall be subject to attachment, in the same manner as individuals, residents of other States or countries, and having property, are now liable to be sued, and their property subject to be attached.

See § 2508, subd. 2, and cross-references. Foreign corporation may do business, how. See Act of 1891, at p. 53.

Reincorporation; notice of reduction, etc.; manufacturing co's — R. S., §§ 2538b-2541, 2768.

[Corporations created by one State may sue in courts of another. *Bank v. Simpson*, 1 Mo. 184.]

Foreign corporation may be sued in courts of this State by attachment. *Ins. Co. v. Cohen*, 9 Mo. 421; *Farnsworth v. R. R. Co.*, 29 id 75.

Foreign corporation having chief officer in this State may be sued as resident here, by ordinary writ of summons. *Id.*

Foreign corporation, doing business in this State, does not thereby cease to be a citizen of another State, within meaning of act of congress providing for removal of cause from a State court to United States court. *Herryford v. Ins. Co.*, 42 Mo. 148.

It is a resident for purpose of suing and being sued. *St. Louis v. Ferry Co.*, 40 Mo. 580.

Fact that agent of foreign insurance company fails to take out license according to law will not prevent company from maintaining or defending suit. *Ins. Co. v. Walsh*, 18 Mo. 229.

Railroad company had its chief office in Chicago. It had offices also in St. Louis for sale of tickets and for receiving and handling baggage; but general freight office and offices of president and directors were in Chicago. Held, that courts of this State had no jurisdiction over suits for damages brought against said railroad. *Robb v. R. R. Co.*, 47 Mo. 540.

Foreign corporation, existing in this State for purpose of service only is a resident of State where created. *Fielder v. Jessup*, 24 Mo. App. 91.]

§ 2538b. Whenever the charter of any corporation in this State is about to expire by limitation of time, and the stockholders of such corporation, or a majority in interest thereof, desire to incorporate under the general corporation laws of this State for the purpose of continuing the business of such expiring corporation, it shall be lawful for the new corporation to adopt the corporate name of such old corporation: Provided, That nothing herein contained shall be construed to confer upon the new corporation any property, rights, privileges or franchises enjoyed or owned by the old corporation, save and except the use of the old name.

See § 2508, subd. 1.

§ 2539. Any railway, mining, express, telegraph, manufacturing or other company or corporation doing business in this State, and desiring to reduce the wages of its employes or any of them, shall give to the employes to be affected thereby thirty days' notice thereof.

See § 2538, and cross-references.

§ 2540. Such notice may be given by posting a written or printed hand-bill, specifying the class of employes whose wages are to be reduced and the amount of the reduction, in a conspicuous place in or about the shops, station, office, depot or other place where said employes may be at work, or by mailing each employe a copy of said notice or hand-bill, and such company or corporation violating any of the provisions of the preceding section shall forfeit and pay each party affected thereby the sum of fifty dollars, to be recovered by civil action in the name of the injured party, with costs, before any court of competent jurisdiction.

§ 2541. Nothing contained in this article shall be construed to extend to any county or township, or to any public university, academy, seminary or school incorporated by the laws of this State.

#### ARTICLE VIII. MANUFACTURING AND BUSINESS COMPANIES.

Sec. 2768. Who may be incorporated; what articles shall contain.

2769. Articles to be signed, acknowledged and recorded.

2770. Certificate, evidence of incorporation.

2771. May incorporate, for what purposes.

2772. Amount of capital stock; number of directors, how chosen, etc.

2773. Dividends may be declared, when.

2774. Statement of officers to be kept; stockholders to have access to books.

2775. Stock shall not be paid by note; shall not loan money to stockholders.

2776. Stockholders, who considered.

2777. Administrators, etc., may vote.

2778. Books to be kept open.

2779. May increase or diminish capital, when.

2780. Meeting of stockholders to increase stock, etc., how called and notified.

2781. Meeting, how organized; capital, how increased, etc.

2782. Stockholders not liable, when.

2783. May carry on business, where.

2784. Preferred stock, when capital is increased, how voted and issued.

2785. When stock is increased, statement to show what.

2786. Consolidation of companies, how effected.

2787. *Id.*; property of, subject to taxation.

2788. Two preceding sections, application of.

2789. May authorize holders of bonds to convert them into stock, etc.

2790. Jurisdiction of circuit court over directors, etc.

2791. *Id.*; court may appoint receivers, etc.

2792. Jurisdiction, how exercised.

§ 2768. (As amended by L. 1891, p. 79.) Any three or more persons who shall have associated themselves by articles of agreement in writing, as provided by law, for any of the purposes included under section 2771, may be incorporated under any name or title designating such business. The articles of agreement shall set out: First, the corporate name of the proposed corporation, which shall not be the name of any corporation heretofore incorporated in this State for similar purposes, or an imitation of such name; second, the name of the city, or town, and county in which the corporation is to be located; third, the amount of the capital stock of the corporation, the number of shares into which it is divided, and the par value thereof, that the same has been bona fide subscribed, and one-half thereof actually paid up in lawful money of the United States, and is in the custody of the persons named as the first board of directors or managers; fourth, the names and places of residence of the several shareholders, and the number of shares subscribed by each; fifth, the number of the board of directors or managers, and the names of those agreed upon for the first year; sixth, the number of years the corporation is to continue, which in no case shall exceed fifty years; seventh, the purposes for



Manufacturing, etc., companies; articles and certificate; purposes — R. S., §§ 2769-2771.

which the association or company is formed: Provided, That if upon organizing a corporation under this article it is desired that any portion of the stock shall be preferred, the articles shall further set out the amount of such preferred stock, the number of shares thereof, the names of the subscribers therefor, and the number of shares of such stock subscribed by each shareholder.

Certificate not to issue, when. § 2496. Change of name. §§ 2508[7], 2497.

[Corporation to have any legal existence must have a home, a principal place of business, within boundaries of the State which creates it. *Cleaton v. Emery*, 49 Mo. App. 345. Charter is law of existence. *Lead Co. v. Reinhard*, 114 Mo. 218; s. c., 21 S. W. Rep. 488.

Failure of corporators of a manufacturing corporation to pay one-half of capital stock as required by above section will not avail a shareholder as a defense to a proceeding against him by a corporate creditor to enforce his liability on unpaid shares. *Wells v. Mfg. Co.*, 54 Mo. App. 41.

Under statute providing that articles of association shall state city or town and county in which corporation shall be located, acts of body corporate itself, such as annual election of directors, votes to increase or diminish stock, and other meetings of stockholders should take place at home office. *Lead Co. v. Reinhard*, 114 Mo. 218; s. c., 21 S. W. Rep. 488. In this State there is no prohibitory statute, and if all the shareholders give their consent thereto, acts of stockholders at a meeting held in a foreign jurisdiction are valid. *Id.*

Under above section, whether it means that one-half of aggregate capital has been paid, or that fifty cents has been paid on each share of stock, query; and should recitation in articles of association be that one-half of capital stock has been paid up or at least one-half has been paid? *Shepard v. Drake*, 61 Mo. App. 134. A recital in corporate articles of association that one-half the stock has been paid will not estop a subscriber from alleging and proving that his stock is fully paid. *Id.*

Promoters who project and form a corporation occupy a position of trust and confidence, and it devolves upon them to make full disclosures of their interest in and relation to property. *Land Co. v. Case*, 104 Mo. 572; s. c., 16 S. W. Rep. 390. From the time such promoters initiate formation of an association they stand in a confidential relation to each other, and to all who may subsequently become members or subscribers; not competent for them to purchase property and sell it to company at an advance, without full disclosure of facts. *Id.* Persons who subscribe for stock have right to assume that promoters are using their knowledge, skill and ability for benefit of company. *Id.*

Projector cannot be held liable for a contract made by another person in name of contemplated corporation without his knowledge or sanction. *Gazette v. Wherry*, 58 Mo. App. 423.

A substantial compliance with conditions attached to the grant of corporate franchises is all that is required. *State v. Wood*, 13 Mo. App. 139. Requirement as to payment of one-half of capital stock is substantially complied with if the corporation has property whose market value is greater than the par value of the stock. *Id.*

§ 2769. (As amended L. 1891, p. 77.) The articles of agreement shall be signed and acknowledged by all the parties thereto, and recorded in the office of the recorder of deeds of the county or city in which the corporation is to be located; and a certified copy

of such recorded instrument shall be filed in the office of the secretary of State.

See § 2492, and cross-references.

[Failure to file articles of association with secretary of State, effect of. *Reinhard v. Mining Co.*, 107 Mo. 616; s. c., 18 S. W. Rep. 17.

At common law no registry of charter of corporation is requisite. *Roll v. Mining Co.*, 52 Mo. App. 60.

After final certificate of incorporation is issued by secretary of State of Illinois, contract by corporation does not become contract of individual projectors, though requirement of filing such certificate with recorder of county is not complied with. *Gazette v. Wherry*, 58 Mo. App. 423.

Where act of incorporation provides that upon certain things being done company shall become a body corporate, performance of such things constitute a condition precedent; until they are performed, company has no corporate existence. *R. R. Co. v. Shambaugh*, 106 Mo. 557; s. c., 17 S. W. Rep. 581.

Where a charter confers corporate capacity without any condition precedent, acceptance of charter is all that need be shown to prove corporate existence. *Id.*

Directors of corporation have no power to alter its constituent character, or change articles of association, after recording, or discharge a subscriber and substitute another. Articles being recorded can be changed only by amendment, and in mode pointed out by statute. *Olleshelmer v. Mfg. Co.*, 44 Mo. App. 172.

Corporate existence becomes complete under statute of this State, when articles of association are filed in office of secretary of State. *Carpet Co. v. Crawford*, 127 Mo. 356; s. c., 30 S. W. Rep. 162.]

§ 2770. The secretary of State shall give a certificate that said corporation has been duly organized, and the amount of its capital, and such certificate shall be taken by all courts of this State as evidence of the corporate existence of such corporation. The persons so acknowledging such articles of association, and their associates and successors, shall, for the period not to exceed fifty years next succeeding the issuing of such certificate by the secretary of State, be a body corporate; and by such name they and their successors shall be entitled to have, possess and enjoy all the rights and privileges conferred by law upon corporations, subject to the provisions of this article.

See § 2492.

[Authority to officer to issue certificate of incorporation upon compliance of incorporators with statutory requirements is not a delegation of legislative power. *Granby Co. v. Richards*, 95 Mo. 106. Where charter prescribes no mode or time of acceptance, proof that act creating it was passed at request of directors designated therein would show sufficient acceptance. *R. R. Co. v. Shambaugh*, 106 Mo. 557; s. c., 17 S. W. Rep. 581.]

§ 2771. (As amended March 28, 1893.) Corporations may be created under this article for any of the following purposes:

First—To carry on any kind of mining, mechanical, chemical, manufacturing, smelting, printing, coal-oil or petroleum business.

Second—To encourage and promote agriculture and the improvement of stock and for these purposes, may establish fair grounds.



Manufacturing, etc., companies; election of directors; dividends — R. S., §§ 2772, 2773.

Third — To construct toll-bridges.

Fourth — To erect hotels, halls, market-houses, warehouses, exchange and other buildings, and for the purpose of purchasing, owning and renting buildings already erected.

Fifth — To build wharves, docks, grain elevators, levees, and to construct canals and embankments for the reclaiming of lands.

Sixth — To convey and transport persons and freights on land or water by any mode of conveyance whatever.

Seventh — To construct and operate horse railroads.

Eighth — To purchase and use fire-engines, hose, hooks and ladders, and all other apparatus necessary or useful to prevent and extinguish fires.

Ninth — To supply any town, city, district, neighborhood or village with gas or water.

Tenth — To establish steam or other ferries.

Eleventh — For any other purpose intended for pecuniary profit or gain not otherwise especially provided for, and not inconsistent with the Constitution and laws of this State: Provided, That nothing in this section shall be construed to authorize the incorporation of a bond investment company or association to issue bonds or debentures based upon payments upon the installment plans, nor any company which savors of the character of a trust company, bank, saving fund, building and loan or fiduciary company.

See Const., art. XII, § 7.

[Under subdivision 11, a corporation may be organized to issue bonds payable in installments and redeemable under certain rules. *State v. Corkins*, 123 Mo. 56; s. c., 27 S. W. Rep. 363. The section construed. *Clothing Co. v. Iron Works*, 51 Mo. App. 70.]

§ 2772. The amount of the capital stock of the corporation shall be not less than two thousand nor more than ten millions of dollars. The property or business of the corporation shall be controlled and managed by directors, not less than three nor more than thirteen in number, who shall respectively be stockholders in such corporation, and one of whom shall be a bona fide citizen of this State, to be elected by ballot, by the shareholders in such corporation. Any corporation may elect its directors for one or more years, not to exceed three years, the time of service and mode of classification to be provided for by the by-laws of the corporation: Provided, however, That there shall be an annual election for such number or proportion of directors as may be found upon dividing the entire number of directors by the number of years composing a term. The time and place of such election shall be prescribed by the by-laws of such corporation, of which time and place at least two weeks' notice shall be published in some newspaper printed at least once a week in the city or

county in which the corporation is located; and if there be no newspaper published in such county, then in any paper published in this State which circulates in the locality where such corporation is located. Such election shall be made by such of the shareholders as shall attend in person or by proxy, in writing; such shareholder shall be entitled to one vote on each share of stock, and shall have the right to cast as many votes in the aggregate as shall equal the number of shares so held by him or her in said company, multiplied by the number of directors or managers to be elected at such election, and each shareholder may cast the whole number of his or her votes, either in person or by proxy, for one candidate, or may distribute such votes among two or more candidates; and the person having the greatest number of votes shall be declared elected. In case the election shall not be made on the day named, the said corporation shall not thereby be dissolved, but an election may be held at any other time, agreeably to the by-laws of said corporation, and the persons so elected shall hold their office until others are elected and qualified; and in case of the death or resignation of one or more of said directors, the survivors shall fill the vacancy until the next election.

See Const., art. XII, § 6, and cross-references. Failure to elect directors. § 2489.

§ 2773. Dividends of the profits made by the corporation may be declared by the trustees or directors thereof every six months, or oftener, as the directors may elect; but no such dividends shall be made and paid to stockholders while such corporation is in an insolvent condition; and if the directors of any such corporation shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be thereafter contracted while they shall respectively continue in office: Provided, That if any of the directors shall object to the declaring of such dividend, or to the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objections, in writing, with the clerk of the corporation and with the circuit clerk of the county, they shall be exempt from the said liability.

Directors personally liable, when. § 2515.

[Directors have a large discretion in declaring dividends, but it must be exercised reasonably. *Slayden v. Coal Co.*, 25 Mo. App. 439.

Dividends can be paid only out of profits or net increase of capital. Each stockholder is entitled to have capital preserved unimpaired for purpose of carrying on business for which company was formed. *Id.*

Accounts and statements; executors, etc., as stockholders; increase, etc.—R. S., §§ 2774–2780.

Plaintiff having made a prima facie showing of ownership of stock under consideration, and the only rebutting testimony having been excluded, there remains no ground for a claim by defendant that it may withhold dividends until controversy about title to stock shall be determined. *Soeding v. Iron Co.*, 35 Mo. App. 349.

A dividend paid by an insolvent corporation to a stockholder, as against a creditor at that time, is necessarily a gift and is fraudulent and void, and stockholders must account therefor to judgment creditor. *Beyer v. Trust Co.*, 63 Mo. App. 521.

Title to money paid as a dividend by insolvent corporation is valid as against corporation and its assignee, and attachment cannot issue upon a creditor's equitable claim to such dividend. *Id.*

§ 2774. The trustees or directors of the corporation shall keep correct accounts of their transactions, and have full statements of the condition of the affairs of such corporation and a list of the stockholders and the number of shares of stock owned by each made out, and a copy thereof delivered or sent by mail to each of the stockholders as often as once in each year, at least ten days before the day of election; and each shareholder may at all proper times have access to the books of the company, to examine the same, and under such regulations as may be prescribed by the by-laws.

Books to be kept. § 2503, and cross-references.

[Section construed. *State v. Hoffman*, 53 Mo. App. 547.]

§ 2775. No note or obligation given by any stockholder, whether secured by deed of trust, mortgage or otherwise, shall be considered as payment of any part of the capital stock, and no loan of money shall be made by the corporation to any stockholder therein; and if such loan shall be made to a stockholder, the officers making it, or who shall assent thereto, shall be jointly and severally liable to the corporation for the amount of such loan and interest.

See Const., art. XII, § 8, and cross-references. Stock and bonds, for what issued. § 2499.

§ 2776. No person holding stock in the corporation, as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder in such corporation; but the person pledging such stock shall be considered as holding the same, and shall be liable as stockholder accordingly. And the estate and funds in the hands of such executors, administrators, guardians or trustees shall be liable in like manner and to the same extent as the testator or intestate or the ward or person interested in such trust fund would have been if he had been living and competent to act and hold the same stock in his own name.

See Const., art. XII, § 9, and cross-references.

§ 2777. Every such executor, administrator, guardian or trustee shall represent the share of stock in his hands at all meetings of the corporation, and may vote accordingly as a shareholder; and every person who shall pledge his stock as aforesaid may, nevertheless, represent the same at all such meetings, and may vote accordingly as a shareholder.

See § 2484, and cross-references.

§ 2778. The books and all records of the proceedings of such corporation shall be kept open for the inspection of all persons interested.

See §§ 2503-2518. Corporation to keep certain books. Act of 1891, at p. 46.

§ 2779. (As amended April 9, 1895.) Any corporation now existing or which may hereafter be formed for any of the purposes contemplated by this article, may increase or diminish its capital stock by complying with the provisions of this article, in any amount within the limits of this article, and may also extend its business to any other purposes authorized by this article, subject to the provisions and liabilities thereof; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital; and any existing corporation heretofore formed under the general law or any special act, may come under and avail itself of the privileges and provisions of this article, by complying with the following provisions; and thereupon such corporation, its officers and stockholders, shall be subject to all restrictions, duties and liabilities of this article. And any corporation increasing its capital stock shall, before the same shall take effect, cause to be paid up of such increase of capital not less than 50 per cent. in lawful money of the United States.

See Const., art. XII, § 8, and cross-references.

§ 2780. Whenever any corporation shall desire to call a meeting of the stockholders, for the purpose of availing itself of the privileges and provisions of this article, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the directors to publish a notice, signed by at least a majority of them, in a newspaper in the county, if any shall be published therein, at least sixty days, and to deposit a written or printed copy thereof in the post-office, postage prepaid, addressed to each stockholder, at his usual place of residence, at least sixty days previous to the day fixed upon for hold-



Manufacturing, etc., co's; meetings for increase, etc.; liability, etc.—R. S., §§ 2781-2784.

ing such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be extended or changed. An affirmative vote of the persons holding the larger amount in value of all the shares of stock shall be necessary to increase or diminish the amount of its capital stock, or to extend or change its business as aforesaid, or to enable a corporation to avail itself of the provisions of this article. The notice provided for in this section shall be published at least once a week, and the first publication must be at least sixty days before the day of such meeting.

See Const., art. XII, § 8, and cross-references. Meetings, how called. § 2781, and cross-references.

[The certified copy of the statements of proceedings required by section 2781 to be filed with secretary of State must show the newspaper publication of the notice of the proposed increase of stock as required by above section, and if such certificates fail to show such fact, secretary of State has no authority to issue his certificate that the corporation has complied with the law. *State v. McGrath*, 86 Mo. 239. The newspaper notice required by above section was intended for the public at large, while the written or printed notices required to be sent to each stockholder are for the benefit of the stockholders. *Id.*]

§ 2781. (As amended April 9, 1895.) If, at any time and place specified in the notice provided for in the preceding section, stockholders shall appear in person or by proxy, in number representing not less than a majority of all the shares of stock of the corporation, they shall organize by choosing one of the directors chairman of the meeting and a suitable person for secretary, and proceed to a vote of those present, in person or by proxy; and if, on canvassing the vote, it shall appear that a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital, or of extending or changing its business as aforesaid, or availing itself of the privileges and provisions of this article, a statement of the proceedings, showing a compliance with the provisions of this article, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of assets and liabilities of the corporation, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary; and such statement shall be acknowledged by the chairman, and recorded, as provided in section 2769, and a certified copy of such recorded instrument shall be filed in the office of the secretary of State, who shall thereupon issue a certificate that such corporation has complied with the law made and provided for the increase or decrease of capital stock, as the case may be, and the amount to which such capital stock is increased or decreased; and such certifi-

cate shall be taken in all courts of this State as evidence of such increase or decrease of stock; and thereupon the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, and the business extended or changed as aforesaid, and the corporation shall be entitled to the privileges and provisions and be subject to the liabilities of this article: Provided, That in case of increase of capital stock, the statement above provided for shall set out the percentage of the increase that has been actually paid up in lawful money of the United States, and that it is in the custody of the board of directors.

See Const., art. XII, § 8, and cross-references.

§ 2782. No stockholder shall be personally liable for the payment of any debt contracted by any corporation created under this article, which is not to be paid within one year from the time the debt is contracted, nor unless a suit for the collection of such debt shall be brought against such corporation within one year after the debt shall become due; and no suit shall be brought against any stockholder who shall cease to be a stockholder in any such corporation for any debt so contracted, unless the same shall be commenced within two years from the time he shall cease to be a stockholder in such corporation, nor until an execution shall have been returned unsatisfied, in whole or in part.

See Const., art. XII, § 9, and cross-references.

[Above section is obsolete, inasmuch as it applied only to stockholders' statutory liability, which has been abolished. *Hauser v. Thompson*, 56 Mo. App. 85.

In absence of fraud or collusion, a judgment against a corporation is conclusive evidence of liability of a stockholder in a proceeding against the latter under the statute to enforce by execution payment of remainder due and unpaid on a stock subscription. *Nichols v. Stevens*, 123 Mo. 96; s. c., 25 S. W. Rep. 578; 27 id. 613.

When suit against the corporation need not be brought within one year. *Luthy v. Woods*, 1 Mo. App. 170; *Reed v. Warehouse Co.*, 2 id. 82.]

§ 2783. Any corporation organized under the provisions of this article shall have authority to carry on its operations in any part of this State.

§ 2784. (As amended April 11, 1895.) Whenever any corporation shall desire to call a meeting of its stockholders for the purpose of increasing the amount of its capital stock, and the directors thereof shall deem it advisable for the best interests of said company to submit, at the time and place of said meeting, to the stockholders, whether said stock so proposed to be increased shall be preferred, and the amount, number of shares, the price per share, in case an increase shall be determined, and also the character thereof, and in case additional notice to such



Consolidation; bonds converted into stock — R. S., §§ 2785-2790.

effect shall have been given for the time as required by this article, for the purpose of increasing said capital stock, then, if on canvassing the votes of the said stockholders, as required by this article, it shall appear that a majority of all the stock of said company shall have been cast for the increase of its stock, and that all the stockholders have voted that the said increased stock shall be preferred, the said stockholders shall also, at said time and place, by like vote, determine the amount, the number of shares, and the price per share of said increase, and what rate of dividend, not exceeding eight per cent. per annum, shall be paid on said preferred stock out of the net yearly income earned in any one current year, before any dividend shall be made and paid on the general stock of said corporation.

See Const., art. XII, § 8, and cross-references.

[Preferred stock bearing interest absolutely is unauthorized, statutory provision for such stock being for a stated rate of dividend which should be payable only out of the net yearly income of each current year. *Winscott v. Invest. Co.*, 63 Mo. App. 367.]

§ 2785. The statement required by section 2781 of this article, in case said capital stock shall be increased in the manner provided in the foregoing section, shall also set forth the amount and number of shares, the price per share of such increased preferred stock, and also the rate of dividend to be paid thereon.

See Const., art. XII, § 8, and cross-references.

§ 2786. Any two corporations now existing under general or special laws, or which may be hereafter created, whose objects and business are in general of the same nature, may amalgamate, unite and consolidate said corporations and form one consolidated corporation, holding and enjoying all the rights, privileges, power, franchises and property belonging to each, and under such corporate name as they may adopt or agree upon; such consolidation shall be made by agreement in writing, by or under the authority of the board of directors and the assent of the owners of at least three-fifths of the capital stock of each of said corporations, and a certificate of the fact of such consolidation, with the name of the consolidated company, shall be recorded in the office of the recorder of deeds of the city or county in which such corporation is located, and a certified copy of such recorded instrument shall be filed in the office of the secretary of State: Provided, That no such consolidation shall in any manner affect or impair the rights of any creditors of either of said corporations; And provided further, That corporations so consolidating shall accept the provisions of this article. Such agreement may provide

for the number of directors of said corporations, not exceeding thirteen.

See Act of 1891, at p. 47.

[Petition held to state cause of action against new company for debts of codefendant old company, to extent of value of property received by former from latter. *Slattery v. Transp. Co.*, 91 Mo. 217; s. c., 4 S. W. Rep. 79.]

§ 2787. All the property and effects of such consolidated corporation shall be liable to be taxed as other property in this State, any provision in the charter of any of said corporations to the contrary notwithstanding.

See Const., art. X, § 2, and cross-references.

§ 2788. The provisions of the two last preceding sections shall apply only to corporations organized or created solely for manufacturing purposes.

§ 2789. Any corporation now existing under the general law of this State, or which may hereafter be formed under the laws of this State, for any of the purposes contemplated by this article, may, by a vote of its stockholders, representing at least two-thirds of its stock, at a meeting called for that purpose, and in compliance with sections 2780 and 2781, so far as the same may apply, authorize the holders of any bonds that may have been issued by said corporation to exchange the same for and convert the principal thereof into stock of said corporation, at such rates and upon such terms as may be agreed upon as aforesaid, provided such shares of stock shall not be valued at less than their market or actual value; and as said bonds shall thus be exchanged and converted, the stock issued for and in payment of such bonds shall, as the same shall be exchanged and converted, form part of the stock of said corporation, and be entitled to all the benefits and privileges of any other stock of said corporation: Provided, however, That the amount of stock thus issued, together with the stock theretofore issued, shall not exceed, in the aggregate, the amount of stock which said corporation is authorized to issue by law.

§ 2790. The circuit court shall have jurisdiction over the directors, managers, trustees and other officers of corporations now existing or hereafter organized under and by virtue of this article: First, to compel such directors, managers, trustees and other officers to account for their official conduct in the management and disposition of the funds, property and business committed to their charge; second, to order, decree and compel payment by them to the corporation which they represent, and to its creditors, of all sums of money and of the value of all property which they may have acquired to themselves, or transferred to others, or may have lost or wasted, by any violation of their duties or abuse of their powers as

such directors, managers, trustees or other officers of such corporation; third, to suspend any director, trustee, manager or other officer from exercising his office whenever it shall appear that he has abused his trust; fourth, to remove any such director, trustee or other officer upon proof or conviction of gross misconduct; fifth, to direct, if necessary, new elections to be held by the body, or board, or stockholders, duly authorized for that purpose, to supply any vacancy created by such removal, and at such election no person so removed or suspended shall be eligible as a director, trustee or other officer of such company; sixth, to restrain and prevent any alienation of property of the company by said directors, trustees or other officers, in cases when it may be threatened, or there is good reason to apprehend that it is intended to be made in fraud of the rights and interests of such company.

[Trustees of corporation regularly holding their places under claim of right cannot be removed except by judgment at law, or by a proceeding of a judicial nature before the board of which they are members, according to charter, with notice and opportunity for defense. *State v. Adams*, 44 Mo. 570.]

An act which provides that trustees of certain corporations who fail to take a certain oath "shall vacate their offices" does not, *proprio vigore*, create any vacancy. *Id.*

An act which assumes that trustees of corporation have forfeited their places through failure to take such oath, without judicial finding of fact upon proper proceedings, is unconstitutional and void. Act of legislature removing from management of corporation of a public nature, those who refuse to take an oath of loyalty to government, is not a violation of contract embraced in charter. *Id.*

A transfer of property by a corporation when insolvent, in payment of the individual debt of an officer, is fraudulent as against its creditors, though such officers own all its capital stock. *Hall v. Goodnight*, 37 S. W. Rep. 916.]

§ 2791. In proceedings under this article, the court may appoint one or more receivers to take charge of the business, property and effects of such corporation, and to collect, sue for and recover the debts and demands that may be due, and the property that may belong to such corporation, who shall in all respects be subject to the control of the court.

See § 2508, subd. 2, and cross-references.

[An insolvent, but active, corporation has same right to prefer creditors as a natural person. *Manhattan Co. v. Webster Co.*, 37 Mo. App. 145. And this is true although such creditors are among the directors. *Foster v. Mill Co.*, 92 Mo. 79; s. c., 4 S. W. Rep. 260. Otherwise a corporation is hopelessly insolvent. *Mill Co. v. Kampe*, 38 Mo. App. 229; *State v. Brockman*, 39 id. 131.]

Resolution of board of directors of an insolvent corporation authorizing preference of two directors is invalid if vote of either was necessary to its adoption. *Id.* If a conveyance giving a preference is bona fide it will prevail against an attachment by a creditor of the debtor, and it is immaterial that the effect of the conveyance is to hinder or delay other creditors. *Foster v. Mill Co.*, supra. A deed of trust given to secure certain creditors of the corporation, held valid

against objections that it gave preference to four of the directors. *Id.*

Where insolvent corporation is unable to continue business, and directors sell property to new corporation of which they are officers and stockholders, stockholders of old corporation who complain that property sold for less than its value can recover only losses sustained by old corporation by reason of price received. Where it appears that corporation and stockholders were gainers and no losers by transaction, they are not entitled to relief. *Bank v. Iron Co.*, 97 Mo. 38; s. c., 10 S. W. Rep. 865.

Stockholder who takes part in sale of property, and who afterward ratifies such sale, will not be heard to complain that property sold for less than its value. *Id.*

The presumption is that the appointment of a receiver by a court having jurisdiction is valid. *Packet Co. v. Davidson*, 13 Mo. 561. His appointment and his acts cannot be collaterally attacked. *Id.*

A receiver held properly appointed for a corporation whose officers had diverted corporate funds to their own use. *Glover v. St. Louis, etc., Co.*, 40 S. W. Rep. 110.]

§ 2792. The jurisdiction conferred by this article shall be exercised as in ordinary cases, on petitions filed by or at the instance of any director, trustee or other officer of such corporation having a general superintendence of its concerns, or at the instance of any creditor or stockholder of such corporation.

R. S., § 2193, provides for appointment of receivers in cases not otherwise provided for.

[Under above section and section 2193 a judge may, in vacation, appoint a receiver for a corporation. *Glover v. St. Louis, etc., Co.*, 40 S. W. Rep. 110.]

## CHAPTER XLVII.

### Crimes and Punishments.

#### ARTICLE III. OFFENSES AGAINST PUBLIC AND PRIVATE PROPERTY.

Sec. 3571. Fraudulent acts of agents of corporations.

3572. Fraudulent issue of stock.

§ 3571. Every officer or agent of any incorporated company or corporation, formed or existing under or by virtue of the laws of any of the United States, who shall within this State willfully and designedly sign or procure to be signed, with intent to issue, sell or pledge, or cause to be issued, sold or pledged, or shall willfully and designedly issue, sell or pledge, or cause to be issued, sold or pledged, any false or fraudulent certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such incorporated company or corporation, or any false or fraudulent bond or evidence of debt of such incorporated company or corporation, or any certificate or other evidence of the ownership or transfer of any share or shares in such incorporated company or corporation, or any instrument purporting to be a certificate or other evidence of ownership or transfer of such share or shares, or purporting to be such bond or evidence of debt,



Fraudulent issue of stock; wages preferred; executions — R. S., §§ 3572, 4911, 4924, 4925.

the signing, issuing, selling or pledging of which shall not be authorized by the charter and by-laws of such incorporated company or corporation, or some amendment thereof, shall be deemed guilty of a felony, and shall be punished by a fine not exceeding three thousand dollars, and imprisonment in the State prison for a term not less than three nor more than seven years.

§ 3572. Every officer or agent of every incorporated company, joint-stock company or corporation formed or existing under or by virtue of the laws of any of the United States, who shall, within this State, knowingly, willfully and designedly sign or procure to be signed, with intent to issue or pledge, or caused to be issued, sold or pledged, or who shall willfully, knowingly and designedly issue, sell or pledge, or caused to be issued, sold or pledged, any certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such incorporated company, joint-stock company or corporation, or any bond or evidence of debt of such incorporated company, joint-stock company or corporation, or any instrument purporting to be a certificate or other evidence of ownership or transfer of such share or shares, or purporting to be such bond or evidence of debt, without being thereunto first authorized and empowered by such incorporated company, joint-stock company or corporation, and every such officer and agent who shall reissue, sell, pledge or dispose of any surrendered or canceled certificate or other evidence of the ownership or transfer of any such share or shares, or of any right or interest therein, with the intent of defrauding any such corporation or any person or persons, shall be deemed guilty of a felony, and shall be punished by a fine not exceeding three thousand dollars, and imprisoned in the penitentiary not less than three nor more than seven years.

Issuance of stock. §§ 2496-2502.

## CHAPTER LXIII.

### Executions.

- Sec. 4911. Employees and laborers preferred creditors.  
 4924. Officers of corporations to furnish sheriffs, etc., with certificate of shares, etc.  
 4925. Execution, how levied, in such cases.  
 4927. Proceedings when shares seized in execution are claimed by another party.  
 4928. Officer shall return claim, with bond, to the court, when.  
 4953. Bill of sale of stock in corporation to be made; effect thereof.

§ 4911. Hereafter when the property of any company, corporation, firm or persons shall be seized upon by any process of any court of this State, or when their business shall be suspended by the action of creditors, or be put into the hands of a receiver or trustee, then in all such cases the debts owing to

laborers or servants, which have accrued by reason of their labor or employment, to an amount not exceeding one hundred dollars to each employe, for work or labor performed within six months next preceding the seizure or transfer of such property, shall be considered and treated as preferred debts, and such laborers or employes shall be preferred creditors, and shall be first paid in full; and if there be not sufficient to pay them in full, then the same shall be paid to them pro rata, after paying costs. Any such laborer or servant desiring to enforce his or her claim for wages under this chapter shall present a statement under oath showing the amount due after allowing all just credits and set-offs, the kind of work for which such wages are due, and when performed, to the officer, person or court charged with such property, within ten days after the seizure thereof on any execution or writ of attachment, or within thirty days after the same may have been placed in the hands of any receiver or trustee; and thereupon it shall be the duty of the person or court receiving such statement to pay the amount of such claim or claims to the person or persons entitled thereto, after first paying all costs occasioned by the seizure of such property, out of the proceeds of the sale of the property seized: Provided, That any person interested may contest any such claim or claims, or any part thereof, by filing exceptions thereto, supported by affidavit, with the officer having the custody of such property; and thereupon the claimant shall be required to reduce his claim to judgment before some court having jurisdiction thereof before any part thereof shall be paid.

See § 2538, and cross-references.

[Section applied and construed. *Holland v. De-priest*, 56 Mo. App. 514.]

§ 4924. When an execution shall be issued against any person, being the owner of any shares or stock in any bank, insurance company or other corporation, it shall be the duty of the cashier, secretary or chief clerk of such bank, insurance company or other corporation, upon the request of the officer having such execution, to furnish him with a certificate, under his hand, stating the number of rights or shares the defendant holds in the stock of such bank, company or corporation, with the incumbrance thereon.

See § 2508, subd. 2, and cross-references. Penalty on chief officer. § 7541.

[Franchise of corporation not subject to levy and sale under execution. *Stewart v. Jones*, 40 Mo. 140. Above section construed. *Banking Co. v. Bank*, 113 Mo. 17; s. c., 20 S. W. Rep. 690; *Smith v. Mining Co.*, 47 Mo. App. 415.]

§ 4925. The officer upon obtaining such information, or in any other manner, may



Execution against shares of stock; garnishments — R. S., §§ 4927, 4928, 4953, 5222.

make a levy of such execution on such rights or shares by leaving a true copy of such writ with the cashier, secretary or chief clerk; and if there be no such officer, then with some officer of such bank, association, joint-stock company or corporation, with an attested certificate by the officer making the levy that he levies upon and takes such rights and shares to satisfy such execution.

Shares subject to attachment. § 540.

§ 4927. When personal property, or any shares in any bank, association, joint-stock company or corporation, or other effects, shall be seized by virtue of any execution, and any person other than the debtor in the execution shall, in writing, verified by affidavit of himself or some credible person, claim such property, or any part thereof, and shall in such claim set forth the right, title or interest of such claimant in and to such property, or any part thereof, and deliver such written claim to the officer making such seizure, such officer shall at once deliver a copy of such written claim to the execution creditor or his attorney of record; and if such execution creditor shall fail, within a reasonable time thereafter, to execute and deliver or tender to such officer a bond, payable to the State of Missouri, with one or more sufficient sureties, residents of the county, to be approved by the officer, conditioned to indemnify such officer and claimant against all damages and costs that may accrue to such officer, or to such claimant, by reason of the seizure and sale of such property, the officer shall abandon such levy and release the property to the claimant. If the execution creditor shall execute and deliver such bond to the officer, the claimant may, at any time before the sale of the property, take possession thereof, upon executing and delivering to the officer a bond, with one or more sufficient sureties, resident of the county, to be approved by him, payable to the State of Missouri, and conditioned that the property shall be safely kept and preserved from damage, and be forthcoming when and where the court shall direct, and for the payment of all costs that shall in the matter of such claim be adjudged against the claimant. Such bonds may be sued on, at the instance of any person injured, in the name of the State, to the use of such person, for any breach of the condition of such bonds; and the damage which such person shall sustain shall be recovered thereon, if the execution creditor shall give bond, as above provided.

See § 2508, subd. 2, and cross-references.

§ 4928. The officer shall return the claim, and such bond or bonds as shall have been taken by him, to the court to which the execution may be returnable, on or before the first day of the next term thereof, and the

clerk shall enter the matter upon the docket, as near as may be, as civil cases are docketed, and the matter shall, unless continued for cause, be tried at the term at which the claim is returned. The execution creditor shall answer or demur to the claim returned by the officer on or before the second day of the term, and the claimant may reply to the answer within such time as may be directed by the court; and all proceedings in relation to such claim shall be governed, as far as practicable, by the law relating to pleadings and practice in civil actions. If the execution creditor shall fail to answer or demur, as herein provided, or the judgment shall be in favor of the claimant, the court shall by its order direct the officer to release such property to the claimant, and shall enter judgment for costs against the execution creditor and his sureties. If the judgment shall be for the execution creditor, it shall be against the claimant and his sureties in like manner, and the court shall order the property sold, and a certified copy of such order shall be delivered to the officer, and shall have the force and effect of and be proceeded upon as special execution.

[See *Lloyd v. Tracy*, 53 Mo. App. 178; *State v. Durant*, *Id.* 495.]

§ 4953. When any rights or shares of stock in any bank, association, joint-stock company or corporation shall be sold, the officer making such sale shall execute an instrument in writing, reciting the sale and payment of the consideration, and conveying to the purchaser such rights and shares, and shall also leave with the cashier, secretary or chief clerk, or, if there be none, with any other officer of such bank, association, joint-stock company or corporation, a copy of the execution and his return thereon; and the purchaser shall thereupon be entitled to all dividends and stock, and to the same privileges as a member of such company or corporation as such debtor was entitled to.

See § 2508, subd. 2, and cross-references.

[The purchaser at execution sale under above section is entitled to all the privileges of the debtor stockholder, whether the company chooses to recognize him or not. *Kahn v. Bank*, 70 Mo. 269.]

## CHAPTER LXXIV.

### Garnishments.

Sec. 5222. Notice of garnishment, how served on corporation.

§ 5222. Notice of garnishment shall be served on a corporation in writing, by delivering such notice, or a copy thereof, to the president, secretary, treasurer, cashier or other chief or managing officer of such corporation: Provided, Such notice may be served on railroad corporations by delivering the same, or a copy thereof, to the nearest station or freight agent of such corpora-

Manufacturers' licenses; quo warranto — R. S., §§ 6821, 6822, 7390.

tion, in the county in which the cause of action is pending.

See § 2508, subd. 2, and cross-references.

[Service on railroad company must be upon "the station or freight agent." *Werries v. R. R. Co.*, 19 Mo. App. 398; *Haley v. R. R. Co.*, 80 id. 112; *Mangold v. Dooley*, 89 id. 111; s. c., 1 S. W. Rep. 126. Service on foreign insurance company, *Gates v. Tusten*, 80 Mo. 13; s. c., 14 S. W. Rep. 827. Objection on ground of defective service may be made by garnishee, even after the general appearance and filing of answer. *Fletcher v. Wear*, 81 Mo. 524. The return should show that the officer had attached the property or evidence of debt "in his hands." *Norvell v. Porter*, 62 Mo. 310; *Fletcher v. Wear*, supra; *Connor v. Pope*, 18 Mo. App. 86. But such return should be indorsed on the writ, not upon the notice of garnishment. *Todd v. Ry. Co.*, 33 Mo. App. 112.]

## CHAPTER CVI.

### Manufacturers' Licenses.

Sec. 6821. Manufacturers to be taxed.

6822. Manufacturer defined.

§ 6821. All manufacturers in this State shall be licensed and taxed on all raw material and finished products, as well as all the tools, machinery and appliances used by them, in the same manner as is or may be provided by law for the taxing and licensing of merchants; and no county, city, town, township or municipal authority thereof, shall ever levy any greater amount of tax against any manufacturer than is levied against merchants for the same period: Provided, That manufacturers shall file, separately, their sworn statement of the greatest aggregate amount of raw material and finished products which they may have had on hand between the first Monday in March and the first Monday in June, of the then current year, on any one day between said times, as well as the tools, machinery and appliances used in conducting their business or owned by them on the first day of June of each year; Provided further, That nothing in this chapter be so construed as to apply to manufacturers whose raw materials, finished products, tools, machinery and appliances, in the aggregate amount, be less than one thousand dollars. Licenses issued under this chapter shall be for one year, ending on the first day of June of the then current year, and no other or greater amount of tax of any kind, whether State or local, shall be assessed, levied or collected by the State, or any county or municipality, on such raw material, finished products, tools, machinery and appliances, than is levied for the same year upon merchandise, under the law regulating merchants' license.

§ 6822. Every person, company or corporation who shall hold or purchase personal property for the purpose of adding to the value thereof by any process of manufacturing, refining, or by the combination of different materials, shall be held to be a manufacturer for the purposes of the foregoing section.

## CHAPTER CXXXII.

### Quo Warranto.

Sec. 7390. Information to be exhibited, when; by whom.

7391. Proceedings in, how governed.

7392. An information may be exhibited against several persons, when.

7393. Defendant shall appear and answer at same term.

7394. Judgment.

7395. The court may fix time for pleading.

§ 7390. In case any person shall usurp, intrude into or unlawfully hold or execute any office or franchise, the attorney-general of the State, or any circuit or prosecuting attorney of the county in which the action is commenced, shall exhibit to the circuit court, or other court having concurrent jurisdiction therewith in civil cases, an information in the nature of a quo warranto, at the relation of any person desiring to prosecute the same; and when such information has been filed and proceedings have been commenced, the same shall not be dismissed or discontinued without the consent of the person named therein as the relator; but such relator shall have the right to prosecute the same to final judgment, either by himself or by attorney \* \* \*

See § 2508, subd. 2, and cross-references. Contested corporate elections. § 2512. See note on general powers, under § 2508.

[An action of quo warranto is one at law, and the finding of fact, if supported by substantial evidence, is conclusive upon an appellate court. *State v. Alt*, 26 Mo. App. 673. And in absence of statutory provision is governed by the common law. *State v. Townsley*, 56 Mo. 107.

Violation of charter cannot be taken advantage of collaterally, but on a direct proceeding only. *Bank v. Merchants*, 10 Mo. 123.

Action of quo warranto instituted against corporation admits corporate existence, and does not lie when corporation is not charged with misuser or non-user of franchises, nor with usurpation of franchises granted to it. *State v. Road Co.*, 37 Mo. App. 496.

Attorney-general or circuit attorney is proper person to institute proceedings by quo warranto against corporation, for misappropriation of funds; to charge attorney-general or circuit attorney with this duty, written complaint should be made to him by some creditable person required by the statute. *Tyree v. Bingham*, 100 Mo. 451; s. c., 13 S. W. Rep. 952.

Corporation by omitting to perform a duty imposed by its charter does not ipso facto cease to be a corporation, but exposes itself to being deprived of its corporate character and franchises by a quo warranto proceeding instituted by the State. *Ford v. R. R. Co.*, 52 Mo. App. 439.

Where State assails a corporation by quo warranto for illegal acts, it must charge and prove the abuse or misuse of its franchise relied upon as ground of forfeiture. *State v. Talbot*, 123 Mo. 69; s. c., 27 S. W. Rep. 366.

Proceedings in equity is not the proper remedy to enforce the forfeiture of a franchise. *State ex rel. v. Ry. Co.*, 41 S. W. Rep. 955.

An information against a corporation held to sufficiently charge that the acts constituting the misuser were designedly done. *State ex rel. v. Equitable L. & L. Co.*, 41 S. W. Rep. 916.

Quo warranto for usurping corporate powers is properly brought against the officers of such corporation as individuals. *State ex rel. v. Fleming*, 44 S. W. Rep. 753.]



§ 7391. The relator shall be named as such, in the information against such person usurping, intruding into or unlawfully holding or executing any such office or franchise, and shall proceed thereon in such manner as is usual in cases of information in the nature of a quo warranto.

§ 7392. If it shall appear to such court that the several rights of divers persons to the same office or franchise may properly be determined on one information, the said court may give leave to exhibit one information against several persons, to try their respective rights to such office or franchise.

§ 7393. Such person, against whom an information in the nature of a quo warranto shall be prosecuted, shall appear and answer at the same term in which the same information shall be filed, unless the court shall give further time; and such person prosecuting such information shall proceed thereupon with the most convenient speed.

§ 7394. In case any person, against whom any such information in the nature of a quo warranto shall be prosecuted, shall be adjudged guilty of any usurpation of, or intrusion into, or unlawfully holding and executing any office or franchise, it may be lawful for the court as well to give judgment of ouster against such person from any of the said offices or franchises, as to fine such person for his usurpation of, intruding into or unlawfully holding and executing any such office or franchise, and to give judgment that the relator in such information named shall recover his costs of such prosecution; and if judgment shall be given for the defendant in such information, he shall recover his costs against such relator.

§ 7395. The court in which any information shall be exhibited shall allow to the relator and the defendant such convenient time to answer, reply or demur, as shall seem just and reasonable.

[Quo warranto in this State is essentially a civil action, and is subject to the rules governing pleading in civil cases. *State v. Kupferle*, 44 Mo. 154; *State v. Steers*, id. 223.]

## CHAPTER CXXXVIII.

### The Assessment and Collection of the Revenue.

- Art. I. Taxation and equalization.  
 II. The assessment of property.  
 III. Collection of the revenue.

#### ARTICLE I. TAXATION AND EQUALIZATION.

- Sec. 7503. Property taxable for State purposes.  
 7508. Personal property to be assessed where the owner resides.  
 7510. Certain terms defined.

§ 7503. For the support of the government of the State, the payment of the public debt, and the advancement of the public interest, taxes shall be levied on all property, real and personal, except as stated in the next section.

See Const., art. X, § 2, and cross-references.

§ 7508. All personal property, of whatsoever nature and character, situate in a county other than the one in which the owner resides, shall be assessed in the county where the owner resides; and all notes, bonds or other evidences of debt, made taxable by the laws of this State, held in any State or territory other than that in which the owner resides, shall be assessed in the county where the owner resides; and the owner, in listing, shall specifically state in what county, State or territory it is situate or held.

See Const., art. X, § 2, and cross-references.

§ 7510. \* \* \* The term "bonds," or "stocks," wherever used in this chapter, shall be held to mean and include bonds or stocks of whatsoever kind, whether issued by incorporated or unincorporated companies, \* \* \* held or controlled by persons residing in this State, whether for themselves or as guardians, trustees or agents, on which the holder or owner thereof is receiving or is entitled to receive interest for themselves or others. The terms "capital stock" and "shares of capital stock," wherever used in this chapter, shall be held to mean and include the capital stock of every association, corporation, joint-stock or other company, the stock or capital of which is or may be divided into shares which are transferable by the owner, for the taxation of the capital stock of which association, corporation, joint-stock or other company no special provision is made by this chapter, held by persons residing in this State, either for themselves or as guardians, executors, administrators, trustees or agents. The term "personal property," wherever used in this chapter, shall be held to mean and include bonds, stocks, moneys, credits, the capital stock, undivided profits, and all other means not forming part of the capital stock of every company, whether incorporated or unincorporated, and every share, portion or interest in such stock, profits or means, by whatsoever name they may be designated; \* \* \* the word "person," as used in this chapter, shall be held to mean and include person, firm, company, corporation or otherwise, whenever the case may so require its use or application.

See Const., art. X, § 2, and cross-references.

#### ARTICLE II. THE ASSESSMENT OF PROPERTY.

- Sec. 7538. Assessment of manufacturing and business companies and stock in other corporations.  
 7541. Penalty on chief officer of corporation.

§ 7538. (As amended April 1, 1891.) The property of manufacturing companies and other corporations named in article eight, chapter forty-two, and of all other corporations, the taxation of which is not otherwise provided for by law, shall be assessed and



taxed as the property of individuals. Persons owning shares of stock in banks, or any joint-stock institution or association doing a banking business, or any insurance company, whether of fire, marine, life, health, accident or other insurance, incorporated under or by any law of the United States or of this State, shall not be required to deliver to the assessors a list thereof; but the president or other chief officer of such corporation, institution or association shall, under oath, deliver to the assessor a list of all shares of stock held therein and the names of the persons who hold the same, with the face value thereof, and shall also deliver to the assessor a complete statement of all reserve funds, undivided profits, premiums or earnings, and all other values belonging to such corporations, companies, institutions or associations. And such statement of shares of stock, together with the statement of reserve funds, undivided profits, premiums or earnings and other values so delivered to or furnished the assessor, shall, for the purposes of taxation, be treated as that amount of money, less the taxable value of the real estate and fixtures, subject to the right of the parties in interest, to show the impairment of such shares of stock before the board of equalization. Private bankers, brokers, money brokers and exchange dealers shall make like returns and be assessed and taxed thereon in like manner as hereinabove provided. Insurance companies or any corporations or associations doing business on the mutual plan without capital stock, shall make like returns of the net value of all assets or values belonging thereto, which net value shall be assessed and taxed in the manner hereinbefore provided: Provided, however, That the license hereafter required to be paid by any such bankers, brokers and dealers, in addition to such taxes, shall not exceed one hundred dollars per annum.

See Const., art. X, § 2, and cross-references, and Act of 1891, at p 46.

[Property of corporation is represented by its shares of stock, and there cannot be for purposes of taxation any other property over and above stock held by stockholders. *R. R. Co. v. Shacklett*, 30 Mo. 550; *State v. R. R. Co.*, 37 id. 265.

Corporation chartered abroad but acting by its agent in this State, is resident of State for purposes of taxation on property situated within State. *St. Louis v. Ferry Co.*, 40 Mo. 580.

All after-acquired capital stock or property of a corporation, as well as the original stock, is liable to assessment. *Ins. Co. v. Charles*, 47 Mo. 462. Shares of stock owned by individuals in manufacturing companies are not subject to taxation. *Valle v. Ziegler*, 84 Mo. 214.

The situs of shares of stock in a corporation is residence of the owner, where statute does not declare to the contrary, but if taxed to him as personal estate it is properly taxable by the jurisdiction to which his person is subject, whether the corporation be foreign or domestic. *Ogden v. City*, 90 Mo. 523; *s. c.*, 3 S. W. Rep. 25; *School District v. Wickersham*, 34 Mo. App. 341.

The assessment for taxes required to be made upon corporate stock is not a charge against the corporation, and the tax is not payable by the receiver of an insolvent or dissolved corporation. *Relfe v. Ins. Co.*, 11 Mo. App. 374.

As to taxation of corporations, see *B. & S. Assn. v. Lightner*, 42 Mo. 421; 47 id. 393; *Life Assn. v. Assessors*, 49 id. 512.]

§ 7541. If the president or other chief officer of any such corporation fail to comply with the provisions of this article, he shall forfeit to the State the sum of one thousand dollars, to be recovered by indictment in any court of competent jurisdiction.

See § 4924.

[Assessment of taxes against bank stock must be made against the shareholders personally. *State v. Bank*, 87 Mo. 441.]

#### ARTICLE III. COLLECTION OF THE REVENUE.

Sec. 7610. Shares of stock may be sold for non-payment of taxes.

7611. Penalty for failure to give information.

§ 7610. The cashier, secretary or chief clerk of any corporation, the shares of which are taxable by law, at the request of the collector shall give him a certificate under his hand, showing the number and amount of shares held in the stock of such corporation, the names of the holders and the incumbrances thereon; and such collector, in default of the payment by the corporation of the taxes due thereon, as required by this chapter, shall seize and sell the same in the manner prescribed in this chapter, and the purchaser thereof shall be admitted to all the rights, powers and privileges that the holders of such shares had at the time of seizing the same, and shall be entered by such corporation on their books as the owner of such shares.

See Const., art. X, § 2, and cross-references.

§ 7611. If any corporation or any officer thereof shall fail to comply with the provisions of the preceding section, such corporation shall forfeit to the State the sum of one thousand dollars, to be recovered by civil action in the name of the State in any court of competent jurisdiction.

## LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO 1889.

1. To require corporations to have general offices in this State, and to keep therein certain books and papers.
2. To provide for assessment of personal property of manufacturing and business corporations.
3. To prohibit pools, trusts and conspiracies to control prices.
4. To compel corporations to restore grants of property before removal of factories.
5. Relating to health and safety of employes.
6. Prescribing conditions upon which foreign corporation may do business.
7. To prevent abridgment of rights of employes.
8. To require corporations to report annually to secretary of State.
9. To restrict right of aliens to hold real estate.
10. To prohibit foreign corporations from acting as trustees in any deed of trust.
11. To provide for endowment of the State university.
12. To provide for payment of wages in lawful money.
13. To prevent corrupt practices at elections.
14. To restrict employment of children.

### Act 1.

AN ACT to require corporations to have their general offices in this State, and to keep therein certain books and papers, providing penalty for failure to obey, repealing inconsistent acts, and declaring an emergency requiring that this act take effect immediately.

Be it enacted by the general assembly of the State of Missouri, as follows:

Section 1. (As amended March 20, 1893.) Every corporation created by or existing under the laws of this State shall have and keep a general office for the transaction of business, and shall have and keep such office within this State, and shall have at least three of its directors citizens and residents of this State; and in case such a corporation is a railroad or a railway company, it shall have such general office located on or near the line of its road or route mentioned in its charter or articles of association. Every corporation, wherever or however created or existing, which owns, controls or operates a railroad of one hundred and fifty miles or more in length in this State, and which railroad in this State was constructed under a franchise or charter granted by or derived from this State, shall have its general office for the control, operation and management of such railroad located in this State, and on or near the line of the said railroad: Provided, That where two or more such railroads are under a common control or management, the maintenance of but one general office therefor within this State, and upon the line of some one of such railroads, shall be required. At such general office shall be kept the offices of the superin-

tendent, general manager or director, traffic manager, auditor, treasurer and paymaster, general freight agent and general ticket and passenger agent, under whatever name the duties usually pertaining to such offices may be transacted, together with all books of account and papers appertaining to the business of such offices; and if the corporation was created by or exists under the laws of this State, there shall also be kept at such general office the office of the secretary of the corporation, and all of the records and books of such corporation.

§ 2. Any corporation failing or refusing to obey or comply with any of the provisions of the foregoing section for the period of six months, shall be deemed and held to have forfeited any charter or franchise granted by or derived from this State, and shall be enjoined from transacting any business within the limits of this State; and such forfeiture and injunction may be decreed by any circuit court of any county in which such corporation may do business, or into which any line of such railroad or railway may extend, in a suit to be instituted for that purpose, in the name of the State of Missouri, by the prosecuting attorney of the county in which such suit is prosecuted.

§ 3. All acts or parts of acts conflicting or inconsistent with the provisions of this act are hereby repealed.

§ 4. The need of a law in this State to protect corporations from interference with their affairs under the laws of other States constitutes an emergency within the intent and meaning of the Constitution, which requires that this act take effect immediately; therefore, this act shall take effect and be in force from and after the day of its passage.

(Approved March 10, 1891.)

See § 2503. Foreign corporation to have offices in State. Act of 1891, at p. 53.

### Act 2.

AN ACT to provide for the assessment of personal property of manufacturing and business corporations situated in counties other than where such corporations may be located.

Be it enacted by the general assembly of the State of Missouri, as follows:

Section 1. All personal property of business and manufacturing corporations shall be taxable in the county in which such property may be situated on the 1st day of June of the year for which such taxes may be

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assessed, and every business or manufacturing corporation having or owning personal property on the 1st day of June in each year, which shall, on said date, be situated in any other county than the one in which said corporation is located, shall make return thereof to the assessor of such county where situated, in the same manner as other personal property is required by law to be returned. This act shall not apply to railroad or banking corporations.

(Approved March 26, 1891.)

See Const., art. X, § 2, and cross-references. Stock of corporation deemed personal estate. § 2502. Taxation. §§ 7538 et seq.

**Act 3.**

AN ACT providing for the punishment of pools, trusts and conspiracies to control prices, and as to evidence and prosecution in such cases.

Be it enacted by the general assembly of the State of Missouri, as follows:

Section 1. (As amended April 11, 1895, and March 24, 1897.) Any corporation organized under the laws of this or any other State or country for transacting or conducting any kind of business in this State, or which does transact or conduct any kind of business in this State, or any partnership or individual, or other association of persons whatsoever, who shall create, enter into, become a member of, or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price when so regulated or fixed, or shall enter into, become a member of or a party to any pool, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to penalties as provided in this act: Provided, however, That the provisions of this section shall not apply to agreements of fire insurance companies, or their agents, or boards of fire underwriters, to regulate the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm in cities in this State which now have or which may hereafter acquire a population of one hundred

thousand inhabitants or more; And provided, further, That if such insurance companies or their agents, or the board of fire underwriters doing business in any such city, shall combine in such city, either directly or indirectly, or agree or attempt to agree, directly or indirectly, to fix or regulate the price or premium to be paid for insuring property located wholly outside of such city against loss or damage by fire, lightning or storm, such company so violating the provisions of this act, either by itself, its agents, or by any such board of underwriters, shall be taken and deemed to have forfeited its rights to do business in this State, and shall become liable to all the penalties and forfeitures provided for by the provisions of this act.

§ 1a. (Enacted March 24, 1897.) That from and after the passage of this act all arrangements, contracts, agreements or combinations between persons or corporations, or between persons or any association of persons and corporations, designed or made with a view to lessen, or which tend to lessen full and free competition in the importation, manufacture or sale of any article, product or commodity in this State, and all arrangements, combinations, contracts or agreements, whereby, or under the terms of which, it is proposed, stipulated, provided, agreed or understood that any person, association of persons or corporations doing business in this State, shall deal in, sell or offer for sale in this State, any particular or specified article, product or commodity, and shall not during the continuance or existence of any such arrangement, combination, contract or agreement, deal in, sell or offer for sale in this State, any competing article, product or commodity, are hereby declared to be against public policy, unlawful and void; and any person, association of persons or corporation becoming a party to any such arrangement, contract, agreement or combination, shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to the penalties provided for in the act of which this act is amendatory.

§ 2. It shall not be lawful for any corporation to issue or to own trust certificates, or for any corporation, agent, officer or employe, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.



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§ 3. (As amended April 11, 1895.) Any corporation or company, individual, firm or association violating any of the provisions of this act, shall forfeit not less than five dollars nor more than one hundred dollars for each day it shall continue to do so, to be recovered by an action in the name of the State, at the relation of the attorney-general, circuit or prosecuting attorney—moneys thus recovered to go into the county school fund of the county in which the cause accrues, and in the city of St. Louis into the school fund of said city.

§ 4. Any contract or agreement in violation of any provision of the preceding sections of this act shall be absolutely void.

§ 5. Any purchaser of any article or commodity from any individual, company or corporation transacting business contrary to any provision of the preceding sections of this act shall not be liable for the price or payment of such article or commodity, and may plead this act as a defense to any suit for such price or payment.

§ 6. (As amended April 11, 1895.) Any corporation created or organized by or under the laws of this State, which shall violate any provisions of the preceding sections of this act, shall thereby forfeit its corporate rights and franchises; and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in this State, be by the court declared forfeited, void and of non-effect, and shall thereupon cease and determine; and any corporation created or organized by or under the laws of any other State or country, which shall violate any provisions of the preceding sections of this act, shall thereby forfeit its right and privilege thereafter to do any business in this State, and upon proper proof being made thereof in any court of competent jurisdiction in this State, its right and privilege to do business in this State shall be declared forfeited; and in all proceedings to have such forfeiture declared, proof that any person who has been acting as the agent of such foreign corporation in transacting its business in this State has been, while acting as such agent, and in the name, behalf or interest of such foreign corporation, violating any provision of the preceding section of this act, shall be received as prima facie proof of the act of the corporation itself; and it shall be the duty of the clerk of said court to certify the decree thereof to the secretary of State, and if it be an insurance company, also to the superintendent of the insurance department, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation.

§ 6a. (Enacted March 24, 1897.) That whenever the corporate rights and franchises of any corporation organized under the laws of this State have been declared forfeited by the judgment of a court of competent jurisdiction for any violation of

the provisions of this act, or of the act of which this act is amendatory, and whenever the right and privilege of any corporation organized under the laws of any other State or country to do business in this State has been declared forfeited by the judgment of a court of competent jurisdiction for any violations of the provisions of this act or of the act of which this act is amendatory, it shall thereafter be unlawful for any person, association of persons or corporation to deal in, sell or offer for sale in this State any article, product or commodity made, produced or manufactured, in whole or in part, by any corporation whose rights, franchises or privileges have been so declared to be forfeited; and the foregoing provisions of this section are hereby made applicable in all respects to the successor or assigns of any corporation whose rights, franchises or privileges have been so forfeited. Any person violating the provisions of this section is hereby declared to be guilty of a felony, and upon conviction, shall be punished by imprisonment in the penitentiary for a term not exceeding three years, or by imprisonment in the county jail for a term not exceeding one year, or by a fine not less than one hundred dollars nor more than one thousand dollars, or by both such fine and jail imprisonment: Provided, That no statement made by any person in any affidavit made under the provisions of sections seven and eight of the act of which this act is amendatory shall be competent as evidence against such person in any criminal prosecutions brought under this section.

§ 7. (As amended April 11, 1895, and March 24, 1897.) It shall be the duty of the secretary of State, on or about the first day of July of each year, to address to the president, secretary or treasurer of each incorporated company doing business in this State, a letter of inquiry as to whether the said corporation has all or any part of its business or interest in or with any trust, combination or association of persons or stockholders, as named in the preceding provisions of this act, and to require an answer, under oath of the president, secretary or treasurer or any director of said company.

A form of affidavit shall be enclosed in said letter of inquiry as follows:

## Affidavit.

State of Missouri, }  
County of ..... } ss :

I ....., do solemnly swear that I am the ..... (president, secretary, [treasurer] or director) of the corporation known and styled ....., duly incorporated under the laws of ....., on the ... day of ....., 18., and now transacting or conducting business in the State of Missouri, and that I am duly authorized to represent said corporation in the making of this affidavit, and

## Pools and trusts — Act, April 2, 1891.

I do further solemnly swear that the said ....., known and styled as aforesaid, has not, since the .... day of ..... (naming the day upon which this act takes effect) created, entered into or become a member of or a party to, and was not, on the .... day ....., nor at any day since that date, and is not now a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual, or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm; and that it has not entered into or become a member of or a party to any pool, trust, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm; and that it has not issued and does not own any trust certificates and for any corporation, agent, officer or employe, or for the directors or stockholders of any corporation, has not entered into and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any article; and that it has not made or entered into any arrangement, contract or agreement with any person, association of persons or corporation designed to lessen, or which tends to lessen, full and free competition in the importation, manufacture or sale of any article, product or commodity in this State, or under the terms of which it is proposed, stipulated, provided, agreed or understood that any particular or specified article, product or commodity shall be dealt in, sold or offered for sale in this State to the exclusion, in whole or in part, of any competing article, product or commodity.

.....  
(President, secretary, treasurer or director.)

Subscribed and sworn to before me, a ....., within and for the county of ....., this .... day of ....., 18..

(Seal) .....

And on refusal to make oath in answer to said inquiry, or on failure to do so within thirty days from the mailing thereof, the secretary of State shall certify said fact to the prosecuting attorney of the county (the circuit attorney in the city of St. Louis) wherein said corporation is located, and it shall be the duty of such prosecuting or circuit attorney, at the earliest practicable moment, in the name of the State, and at the relation of said prosecuting or circuit attorney, to proceed against such corporation for the recovery of the money forfeit provided for in this act, and also for the forfeiture of its charter or certificate of incorporation, or its right and privilege to do business in this State.

§ 8. It shall be the duty of the secretary of State, at any time, upon satisfactory evidence that any company or association of persons duly incorporated under the laws of this or any other State, doing business in this State, has entered into any trust, combination or association, in violation of the preceding sections of this act, to demand that it shall make the affidavit as above set forth in this act as to the conduct of its business. In case of failure of compliance on the part of the corporation, then the same procedure shall ensue as is provided in section 7 of this act: Provided, That no corporation, firm, association or individual shall be subject to any criminal prosecution by reason of anything truthfully disclosed by the affidavit required by this act, or truthfully disclosed in any testimony elicited in the execution thereof.

§ 9. (As amended April 11, 1895.) It shall be the duty of the attorney-general, the circuit attorney of the city of St. Louis, and the prosecuting attorney of each county, respectively, to enforce the provisions of this act. The attorney-general, the circuit or prosecuting attorneys shall institute and conduct all suits begun in the circuit courts, and upon appeal the attorney-general shall prosecute said suit in the supreme court and courts of appeals. As compensation for his services in this behalf, the attorney-general shall be entitled to his actual expenses incurred in the prosecution of such suits, to be paid by the defendant or defendants when judgment is rendered for the State. The circuit and prosecuting attorneys shall receive for their compensation one-fourth of the penalty collected.

§ 10. (As amended April 11, 1895.) In all suits instituted under this act to forfeit the charter of corporations, or to forfeit the right of a corporation to do business in this State, where a judgment of forfeiture is obtained and the cause is not appealed to the supreme court or courts of appeals, the circuit court rendering such judgment shall allow the circuit or prosecuting attorney a fee of not less than twenty-five dollars nor more than five hundred dollars, to be paid out of the assets of said corporation; and



## Restoration of gifts on removal—Act, April 20, 1891.

when the attorney-general takes part in said prosecution, he shall be entitled to his actual expense, to be paid in like manner.

§ 11. It is hereby made the duty of all county officers in the State to furnish to the secretary of State any information which he may request of them, to enable him the more fully to execute the duties imposed upon him by this act, and for such services the said county officers shall be paid by their respective counties, upon allowance by the county court, such fees as would accrue for like services for the county.

§ 12. Chapter 128, Revised Statutes, 1889, entitled "Pools and trusts," is hereby repealed.

(Approved April 2, 1891.)

See general powers of corporation. § 2508.

#### Act 4.

AN ACT to compel corporations to restore certain gifts or grants of property before removing factories and other establishments; making violation of the act a misdemeanor; fixing penalties and punishment; with an emergency clause providing for immediate effect of the act.

Be it enacted by the general assembly of the State of Missouri, as follows:

Section 1. It shall be unlawful for any corporation doing business in this State at any time, or for the officers, agents or others having control of the corporation or of the business or property of such corporation, to move, abandon or discontinue, in any way, to any material extent, any factory, workshop, office, agency or other establishment, or the work or business carried on therein, from or in any city, town or other place within this State, without first repaying and restoring any and all money, bonds, lands and other property, which have been or shall hereafter be given or granted as a consideration or inducement for the location or construction, operation, enlargement or maintenance at any such city, town or place, of such factory, workshop, office, agency or establishment, or of the work or business carried on thereat; and such repayment or restoration must include and be accompanied by the payment of lawful interest on such money, bonds, lands and other property, or upon the proceeds or reasonable value thereof, for the full period that shall have elapsed between the date of the original gift or grant and such final repayment and restoration.

§ 2. The provisions and penalties of this act shall apply in all cases where the gift or grant was or shall be made by any city, town, company, person or persons, and they shall apply in all cases where the gift, grant, consideration or inducement was made or paid to the corporation owning or operating such factory, workshop, office, agency or

establishment and shall apply as well in all cases where such gift, grant, consideration or inducement, was made or paid to any officer, agent, receiver or trustee of such corporation, or at the time in control of the property or business of the corporation; and the provisions and penalties of this act shall apply also if the corporation has succeeded to the rights, franchises, property or business of any corporation to which, or to the officers, agents, receivers or trustees of which corporation, or of its property, any such gift, grant, consideration or inducement was or shall have been made or paid.

§ 3. The violation of any of the provisions of this act by any corporation, or any shareholder, officer or agent of any corporation, or by any person succeeding to or controlling or managing the property or business of such corporation, is hereby made a misdemeanor, to be punished by fines, penalties, forfeitures, injunctions and imprisonment, as provided in other sections of this act.

§ 4. Any shareholder, officer, agent or other person violating any of the provisions of this act shall be punished by imprisonment for not more than one year, or by fine not to exceed one thousand dollars, or by both such fine and imprisonment; any corporation violating any of the provisions of this act shall be punished by a fine of one thousand dollars for each day that shall elapse between such act of removal, abandonment or discontinuation, and the repayment and restoration required by this act; and any corporation found guilty of violating any of the provisions of this act shall also forfeit all rights this State, and shall be enjoined from trans- or franchises derived from or enjoyed within acting any business within the State.

§ 5. The repayments and restorations required by this act shall be made to the city, town, company, person or persons by which or whom the gift, grant, consideration or inducement was made or paid, or to their successors, assigns or legal representatives.

§ 6. The forfeitures and injunctions provided for in this act may be decreed and enforced by any circuit court of any county in which any such corporation may do business, in a suit to be instituted for the purpose, in the name of the State of Missouri, by the prosecuting attorney of the county in which such suit was prosecuted.

(Approved April 20, 1891.)

See § 2508, subd. 4.

#### Act 5.

AN ACT relating to manufacturing, mechanical, mercantile and other establishments and places and the employment, safety, health and work hours of employees.

Be it enacted by the general assembly of the State of Missouri, as follows:

Section 1. It is hereby made the duty of the public authorities of each city in this



## Protection of employes in factories — Act, April 20, 1891.

State, with a population of five thousand inhabitants or more, to appoint an inspector, with deputies, where the same are necessary, to be paid by the cities such reasonable compensation as may be prescribed by ordinance, whose duty it shall be to make frequent inspections of all factories employing exceeding ten persons, and said inspectors may perform such duties as may be prescribed by ordinance, and shall make semi-annual reports to the State labor commissioner, and shall also cause any violation of the provisions of this act to be brought to the attention of the grand juries of their respective counties. The duties by this section devolved upon an inspector may, under such regulations as may be prescribed by ordinance, be performed by any city officer designated by ordinance of such city for the purpose.

§ 2. All accidents in manufacturing, mechanical, mercantile or other establishments or places within this State where labor is employed, which prevent the injured person or persons from returning to work within two (2) weeks after the injury, or which result in death, shall be reported by the person in charge of such establishment or place to the commissioner of labor, or deputy inspector, or one of the assistant inspectors provided for by this act, and also to the city or county physician, when there be such an officer, which notice may be given by mail.

§ 3. The belting, shafting, gearing and drums, in all manufacturing, mechanical and other establishments in this State, when so placed as to be dangerous to persons employed therein or thereabout while engaged in their ordinary duties, shall be safely and securely guarded when possible; if not possible, then notice of its danger shall be conspicuously posted in such establishments.

§ 4. No minor or women shall be required to clean any part of the mill, gearing or machinery in any such establishment in this State, while the same is in motion, or worked between fixed or traversing parts of any machine, while it is in motion by the action of steam, water or other mechanical power.

§ 5. The openings of all hatchways, elevators and well holes upon every floor of every manufacturing, mechanical or mercantile or public building in this State, shall be protected by good and sufficient trap-doors or self-closing hatches or safety catches, or strong guard-rails at least three feet high, and all due diligence shall be used to keep such trap-doors closed at all times, except when in actual use by the occupant of the building having the use and control of the same.

§ 6. All manufacturing, mechanical, mercantile or other establishments in this State, of two or more stories in height, in which twenty or more persons are employed above the first floor thereof, shall be provided with at least one or more outside iron fire-escapes. For every twenty persons employed on every floor above the second floor of such establish-

ment, there shall be one rope or portable fire-escape, and each story shall be amply supplied with means for extinguishing fire.

§ 7. In all such establishments the main doors, both inside and outside, shall open outwardly, when the inspector, in writing so directs; and no outside or inside door of any building wherein labor is employed shall be so locked, bolted or otherwise fastened during the hours of labor as to prevent egress.

§ 8. Every factory and workshop in this State where women and children are employed, and where dusty work is carried on, shall be lime-washed or painted at least once in every twelve months.

§ 9. No explosive or inflammable compound shall be used in any establishment in this State where labor is employed, in such place or manner as to obstruct or render hazardous the egress of operatives in case of fire.

§ 10. In every factory, workshop, or other establishment in this State where girls or women are employed, where unclean work of any kind has to be performed, suitable places shall be provided for such girls or women to wash and dress, and stairs in use by female employes shall in all such establishments be properly screened.

§ 11. Separate water-closets shall be provided for the use of employes of either sex in manufacturing, mechanical, mercantile and other establishments in this State where persons of both sexes are employed.

§ 12. All manufacturing, mechanical, mercantile and other establishments in this State shall be so ventilated as to render harmless all impurities, as near as may be.

§ 13. In every manufacturing, mechanical, mercantile and other establishment in this State wherein girls or women are employed, there shall be provided and conveniently located seats sufficient to comfortably seat such girls or women, and during such times as such girls or women are not necessarily required by their duties to be upon their feet, they shall be allowed to occupy the seats provided.

§ 14. (As amended March 9, 1897.) In all establishments in this State wherein labor is employed, where any process is carried on by which dust or smoke is generated, any one of the inspectors provided for in this act, or the labor commissioner or his deputies, shall have the power and authority to order that a fan or some other contrivance be put in to prevent the inhalation of such dust or smoke by employes.

§ 15. Where, in the opinion of the commissioner of labor, any establishment wherein labor is employed is so overcrowded with employes as to endanger health or safety, the commissioner of labor, when supported in his opinion by the opinion of some reputable physician, shall be authorized and empowered to prohibit such overcrowding.

§ 16. Whenever the commissioner of labor, or assistant inspector, finds that the heating,

lighting, ventilating, or sanitary arrangements of any establishment where labor is employed, is such as to be dangerous to the health or safety of employes therein or thereat, or the means of egress, in case of fire or other disaster, are not sufficient, or that the building, or any part thereof, is unsafe, or that the belting, shafting, gearing, elevators, drums or other machinery, are located so as to be dangerous to employes, and not sufficiently guarded, or that the vats, pans, ladles or structures filled with molten or hot liquid, or any furnace, be not sufficiently surrounded with proper safeguards, or the platforms, passage-ways and other arrangements around, in or about any railroad yard or switch be such as to probably in, around or about any such establishment lead to injury or accident to those employed or place, the inspector or assistant inspector shall at once notify the person or persons in charge of such establishment or place to make the alterations or additions necessary within thirty days; and if such alterations or additions be not made within thirty days from the date of such notice, or within such time as said alterations could be made with proper diligence, then such failure to make such alterations shall be deemed a violation of this act.

§ 17. No cellar, basement, room or other place shall be occupied as a bake-house which is less than one-half of its height above the level of the street, foot-way or ground adjoining the same, unless the following regulations have been complied with: First, no water-closet, earth-closet, privy or ash-pit shall be within or communicate directly with the bake-house; second, no drain or pipes for carrying off sewage or other impure matter shall have an opening within a bake-house, unless such drain or pipe be trapped with a six-inch water seal, both within and without the wall of the bake-house, and have a ventilating pipe of one-half the size of drain pipe between the wall and the outer trap, and which ventilating pipe shall run two feet above the roof of the building.

§ 18. The sleeping places for workmen and others employed in bake-houses shall be separate and distinct from the places used for making bread.

§ 19. All scaffolds or structures used in or for the erection, repairing or taking down of any kind of building shall be well and safely supported, and of sufficient width, and so secured as to insure the safety of persons working thereon, or passing under or about the same, against the falling thereof, or the falling of such materials or articles as may be used, placed or deposited thereon. All persons engaged in the erection, repairing or taking down of any kind of building shall exercise due caution and care so as to prevent injury or accident to those at work or near by.

§ 20. All platforms, passage-ways, steps, flag offices and other structures or arrangements in and around all railroad yards, switches, round-houses, switch offices, freight houses and passenger depots shall be located, placed and arranged so as to insure, as far as possible, the safety of employes from injury or accident.

§ 21. Within one month after the occupancy of any factory, workshop or mill, the occupant shall notify the inspector, in writing, of such occupancy.

§ 22. Any person or persons, firm or corporation, being the owner, agent, lessee or occupant of any manufacturing, mechanical, mercantile or other establishment, business or calling in this State to which this act applies, or any employe therein or thereat, who shall violate, or aid or abet in violating, any of the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction in any court of competent jurisdiction in this State, be fined for the first offense not less than twenty-five dollars nor more than two hundred dollars, and for each subsequent offense, not less than one hundred dollars nor more than five hundred dollars, and, in default of payment of such fine and costs, shall be committed to the common jail of the county or city in which the offense was committed until such fine and costs are fully paid.

§ 23. When any of the provisions of this act are violated by a corporation, proceedings may be had against any of the officers or agents of such corporation who in any way participated in such violation by the corporation of which they are the officers or agents, and, upon conviction, such officers or agents shall be subject to the same penalty as in case of individuals so offending.

§ 24. All fines collected for violation of this act shall be paid into the common school fund of the county in which the offense was committed.

§ 25. It is hereby made the express duty of the prosecuting attorney of each county or city in this State to lend all possible aid in all prosecutions for violation of the provisions of this act.

§ 26. This act is not intended to impair the force or effect of any law now in force in this State relating to the protection of labor, except such acts or parts of acts as may be inconsistent with this act, and all such are hereby repealed.

§ 27. In case of offense which is in violation of both this act and of some other law of this State, then the inspector or assistant inspector may elect under which law he will prosecute; but where an offense is in violation of some other law of this State in relation to the protection of employes, but is not covered by this act, then it shall be the duty of the inspector or assistant inspector to prosecute for all such offenses under the law violated.



Foreign corporations to file charters, etc.—Act, April 21, 1891.

§ 28. All assistant inspectors appointed in accordance with the provisions of this act shall have the same authority as that vested in the State inspector, and, as far as consistent, their duties shall be the same as defined for the State inspector.

(Approved April 20, 1891.)

#### Act 6.

AN ACT to require every foreign corporation doing business in this State to have a public office or place in this State at which to transact its business, subjecting it to certain conditions, and requiring it to file its articles or charter of incorporation with the secretary of State, and to pay certain taxes and fees thereon.

Be it enacted by the general assembly of the State of Missouri, as follows:

Section 1. Every corporation for pecuniary profit formed in any other State, territory or country, before it shall be authorized or permitted to transact business in this State, or to continue business therein if already established, shall have and maintain a public office or place in this State for the transaction of its business, where legal service may be obtained upon it, and where proper books shall be kept to enable such corporation to comply with the constitutional and statutory provisions governing such corporation; and such corporation shall be subjected to all the liabilities, restrictions and duties which are or may be imposed upon corporations of like character organized under the general laws of this State, and shall have no other or greater powers. And no foreign corporation established or maintained in any way for pecuniary profit of its stockholders or members shall engage in any business other than that expressly authorized in its charter, or the law of this State under which it may come, nor shall it hold any real estate for any period longer than six years, except such as may be necessary and proper for carrying on its legitimate business. And no corporation incorporated under the laws of any other State, territory or country, doing business in this State, shall be permitted to mortgage, pledge or otherwise incur its real or personal property situated in this State, to the injury or exclusion of any citizen or corporation of this State who is a creditor of such foreign corporation, and no mortgage by any foreign corporation, except railroad and telegraph companies, given to secure any debt created in any other State, shall take effect as against any citizen or corporation of this State, until all of its liabilities due to any person or corporation in this State at the time of recording such mortgage have been paid and extinguished.

§ 2. (As amended March 11, 1895.) Every company incorporated for purposes of gain under the laws of any other State, territory or country, now or hereafter doing business

within this State, shall file in the office of the secretary of State a copy of its charter or articles of incorporation, or, in case such company is incorporated merely by a certificate, then a copy of its certificate of incorporation, duly certified [and authenticated] by the proper authority; and the principal officer or agent in Missouri of the said corporation shall make and forward to the secretary of State, with the articles or certificate above provided for, a statement duly sworn to of the proportion of the capital stock of the said corporation which is represented by its property located and business transacted in the State of Missouri, and such corporation shall be required to pay into the treasury of this State, upon the proportion of its capital stock represented by its property and business in Missouri, incorporating taxes and fees equal to those required of similar corporations formed within and under the laws of this State. Upon compliance with the above provisions by said corporation, the secretary of State shall give a certificate that said corporation has duly complied with the laws of this State, and is authorized to do business therein, stating the amount of its entire capital and of the proportion thereof which is represented in Missouri; and such certificate shall be taken by all courts in this State as evidence that the said corporation is entitled to all the rights and benefits of this act, and such corporation shall enjoy those rights and benefits for the time set forth in its original charter or articles of association, unless this shall be for a greater length of time than is contemplated by the laws of this State, in which event the time of duration shall be reckoned from the creation of the corporation to the limit of time set out in the laws of this State: Provided, That the secretary of State shall not issue such certificate to any corporation having the name of any corporation heretofore incorporated in this State for similar purposes, or an imitation of such name: Provided, That nothing in this act shall be taken or construed into releasing foreign loan, building and loan or bond investment companies on the partial payment or installment plan from any provisions of law requiring them to make a deposit of money with a proper officer of this State, to protect from loss the citizens of this State who may do business with such loan, building and loan or bond investment companies: Provided, That the requirements of this act to pay incorporation tax or fee shall not apply to railroad companies which have heretofore built their lines of railway into or through this state; And, provided further, That the provisions of this act are not intended to and shall not apply to "drummers" or traveling salesmen soliciting business in this State for foreign corporations which are entirely non-resident.

§ 3. Every corporation for pecuniary profit, formed in any other State, territory or



Foreign corporations: rights of employees — Acts, April 21, 1891; March 6, 1893.

country, now doing business in or which may hereafter do business in this State, which shall neglect or fail to comply with the conditions of this law, shall be subject to a fine of not less than \$1,000, to be recovered before any court of competent jurisdiction; and it is hereby made the duty of the secretary of State, immediately after August 1, of the year 1891, and as often thereafter as he may be advised that corporations are doing business in contravention to this act, to report the fact to the prosecuting attorney of the county in which the business of such corporation is located, and the prosecuting attorney shall, as soon thereafter as is practicable, institute proceedings to recover the fine herein provided for, which shall go into the revenue fund of the county in which the cause shall accrue; in addition to which penalty, on and after the going into effect of this act no foreign corporation, as above defined, which shall fail to comply with this act, can maintain any suit or action, either legal or equitable, in any of the courts of this State, upon any demand, whether arising out of contract or tort: Provided, That the provisions of this section shall not apply to railroad companies which have heretofore built their lines of railway into or through this State, nor to "drummers" or traveling salesmen soliciting business in this State for foreign corporations which are entirely non-resident.

§ 4. This act does not apply to insurance companies, and is not to be taken or construed to change or modify the laws which are directly applicable to that character of corporations, but apart from the insurance laws, all acts and parts of acts inconsistent with this act are hereby repealed.

§ 5. The fact that there is now no law governing foreign corporations, as above provided for, creates an emergency within the intentment of the Constitution; wherefore this act shall take effect from and after its passage.

(Approved April 21, 1891.)

See § 2492. Corporation to have general office in State. Act of 1891, at p. 46. Foreign corporation not to act as trustee. Act of 1895, at p. 57. May sue and be sued in this State. § 2538a, and note.

[Foreign corporation not engaged in business of banking may make loans of money in this State; such institutions do not come within meaning of act to prevent illegal banking. *Ins. Co. v. Albert*, 39 Mo. 181.]

Charter of corporation obtained from one nation or State, either by special law or under a general law, has no extra-territorial force. *Cleaton v. Emery*, 49 Mo. App. 345.

Such recognition as is given corporation in States other than that in which it was organized, arises alone from international courtesy or law of comity. *Id.*

To obtain charter for purpose of evading laws of a foreign State, under cover of comity, would be a fraud upon State granting charter, and to attempt to act under such charter in foreign States would be fraud upon latter. *Id.*

Incorporators cannot, under a guise of being exempt from foreign penal statutes, import into their own State by such incorporation, any greater immunities and franchises than they possess in State of their incorporation. *Kimball v. Davis*, 52 Mo. App. 194.

Charter obtained from State of Colorado to conduct an exposition in Missouri, with capital of \$1,000,000, when, in fact, only \$43,000 were subscribed. Laws of Missouri require that before such charter shall issue, all stock shall be bona fide subscribed, and one-half paid up. Business of said corporation was to be conducted wholly in this State. Held, that comity does not perfect such a corporation since it was a fraud upon laws of both States. *Cleaton v. Emery*, supra.

Though corporations are mere artificial beings, they may hold property and transact business in a foreign State or country, when not prohibited by laws of such country. *Lead Co. v. Reinhard*, 114 Mo. 218; s. c., 21 S. W. Rep. 488. Corporation organized under laws of England with power to purchase, hold and operate mining lands in this State, may do so, there being nothing in the laws of this State prohibiting it. *Id.*

Where memorandum of association of corporation organized in England under laws thereof provides for the purpose of operation of mining lands in Missouri and "elsewhere," it has power to purchase and operate such lands in England as well as in this State. *Id.*

Though corporation is not empowered to own and operate lands there, but is authorized to do so in this State, it may own and operate them here, such business not being opposed to policy of our laws, and there being no statute denying it the right to do so. *Id.*

A foreign corporation may make a loan in this State. *Ferguson v. Sodem*, 111 Mo. 208; s. c., 19 S. W. Rep. 727.

Corporation brought an action by attachment, without having complied with above act, but did comply before return day of process. Held, that it could then "maintain" the action. *Road Co. v. Stern*, 129 Mo. 381; s. c., 31 S. W. Rep. 772. The act should not be so enlarged by construction as to effect a forfeiture of the right to begin an action. *Id.*

Contract made by foreign corporation, which has failed to comply with above act, is invalid, if it does not come within exceptions made by it. A subscription to capital stock of such corporation made in this State since that act became operative, cannot be enforced through garnishment of subscriber. *Williams v. Scullin*, 59 Mo. App. 30.

The above act is leveled against foreign corporations, that is, foreign corporations permanently located in this State, and enjoying equal advantages of trade with domestic corporations, but bearing none of the public burdens imposed on latter. *Pierce v. Gas Co.*, 60 Mo. App. 148.]

## Act 7.

AN ACT to prevent the abridgment of the legal rights of workmen by employers or other persons.

Be it enacted by the general assembly of the State of Missouri, as follows:

Section 1. No employer, superintendent, foreman or other person exercising superintendence or authority over any mechanic, miner, engineer, fireman, switchman, baggageman, brakeman, conductor, telegraph operator, laborer or other workman, shall enter into any contract or agreement with any such employe, requiring said employe to withdraw from any trade union, labor union or other lawful organization of which said employe may be a member, or requiring said employe to refrain from joining any trade union, labor union, or other law-

Annual reports — Act, March 18, 1893.

ful organization, or requiring any such employe to abstain from attending any meeting or assemblage of people called or held for lawful purposes, or shall by any means attempt to compel or coerce any employe into withdrawal from any lawful organization or society.

§ 2. Corporations, and the managers, superintendents, overseers, master mechanics, foremen, officers and directors, and others exercising authority for and on behalf of corporations doing business in this State, shall be subject to the provisions of this act, and, upon conviction of the violation of any of its provisions, to the punishment prescribed by it.

§ 3. Any person or corporation violating any of the provisions of this act shall, upon conviction, be punished by a fine of not less than fifty dollars nor more than one thousand dollars, or imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

(Approved March 6, 1893.)

See § 2538, and cross-references.

#### Act 8.

AN ACT repealing an act requiring incorporated companies, other than railroad and insurance companies, to report annually to the secretary of State, and enacting a new act on the same subject in lieu thereof.

Be it enacted by the general assembly of the State of Missouri, as follows:

Section 1. That the act entitled "An act requiring incorporated companies, other than railroad and insurance companies, to report annually to the secretary of State," approved April 18, 1891, be and the same is hereby repealed, and the following is enacted in lieu thereof:

§ 2. The secretary of State is hereby required, on or before the 15th day of June in each year, to send by mail to every stock company or association, except railroad, building and loan and insurance companies, and such incorporated companies as are exempted from taxation by the laws of this State, of which he has cognizance, which is organized for purposes of gain, or to hold property within this State, blanks to be used in making the reports provided for in this act.

§ 3. Every incorporated company, other than railroad, building and loan and insurance companies, and such corporations as are exempted from taxation by the laws of this State, formed under and by authority of the laws of this State, whose capital stock is divided into shares, shall, annually, on the first day of July, report to the secretary of State the location of its principal business office, the name of its president and secretary, the amount of its capital stock, both subscribed and paid up, the par value of its stock and the actual value of

its stock at the time of making said report, the cash value of all of its personal property and of all of its real estate within this State on the first day of June immediately preceding, and the amount of taxes, city, county and State, paid by the corporation in this State for the year last preceding the report.

§ 4. Every incorporated company, except railroad, building and loan and insurance companies, formed in any State, territory or country other than the State of Missouri, doing business in and having an office, factory or plant in this State, shall, annually, on the first day of July, report to the secretary of State the location of its principal office, factory or plant in this State, the name of its principal officer in this State, the cash value of all of its personal property and of all of its real estate within this State on the first day of June immediately preceding, the amount of taxes, city, county and State, paid by the corporation in this State, for the year preceding the date of the report.

§ 5. It is hereby made the duty of the officers of all corporations affected by this act to keep their books and accounts in such a manner as to enable them accurately to comply therewith. It shall also be the duty of such officers of corporations to promptly make and return the reports required by this act; and no corporation to which this act applies shall be held to be excused from making the report herein required by reason of failure to receive the blanks provided to be supplied by the secretary of State by section two of this act.

§ 6. Each of said reports shall be signed and sworn to according to law, before an officer authorized to administer oaths, by the president or secretary, if the corporation be organized under the laws of this State, and by its principal officer in this State, if organized in any other State, territory or country. And in case said corporation is in the hands of an assignee or receiver, then such report shall be signed and sworn to by said assignee or receiver.

§ 7. Every incorporation to which this act applies, failing, within sixty days from July the first in each year, to make the report herein provided for, shall be subject to a fine of not less than fifty nor more than one thousand dollars for each offense, and each succeeding thirty days of such failure shall constitute a separate offense and be subject to a like fine, which said fines shall be accumulative, and one action may be maintained to recover one or more such fines, to be recovered before any court of competent jurisdiction. No suit shall be maintained for any such offense unless brought within six months from September first of the year in which the report is due, which date shall be the time when such right of action accrues; and it is hereby made the duty of the secretary of State, as soon as practicable after the first day of September



Annual reports; rights of aliens to hold real estate — Acts, March 18, 1893; April 1, 1895.

in each year, to report to the prosecuting attorney of the county in which any such delinquent corporation may be located, the fact of its failure to make the required report, and the prosecuting attorney shall, at the first court term after he receives the report from the secretary of State, institute proceedings in the name of the State, at the relation of the county, to recover the fine or fines herein provided for, which shall be applied to the county revenue fund, except that for instituting and prosecuting said suits the prosecuting attorney shall receive as his compensation one-fourth of the penalty collected; and in case any such suit shall be taken to either of the courts of appeals or the supreme court, then the attorney-general is hereby required to assist the prosecuting attorney, and the attorney-general shall also be entitled to one-fourth of the amount recovered from the corporation violating the law. The secretary of State shall, whenever a corporation makes its report after the time provided by law for the making of such report, certify that fact to the prosecuting attorney.

§ 8. The president or secretary of every domestic incorporated company in this State, when it shall dissolve, and the principal officer of every foreign corporation when it shall retire from business in this State, is hereby required to file with the secretary of State an affidavit to that effect, and any failure to comply with the provisions of this section shall subject such company or the officers thereof to a penalty of from fifty to five hundred dollars, to be collected as is provided for the collection of penalties and remuneration of prosecuting officers in section 7 of this act. The mere retirement from business of a domestic corporation, without dissolution, shall not exempt it from the requirement to make reports under this act. The prosecuting attorneys in the various counties, to whom corporations are reported as having failed to comply with this act, when they shall be unable to find the officers of said corporations, or to secure service upon them for its violation, or when they shall ascertain that said corporations were dissolved before the passage of this act, are hereby required to certify the fact to the secretary of State, separately as to each corporation, and such certificate shall be taken by the secretary of State as prima facie evidence that the corporation is defunct and out of existence for the purposes of the records of his office.

§ 9. It shall be the duty of the assessor of each county, and the president of the board of assessors in the city of St. Louis, to make to the secretary of State, when requested by him so to do, a report of all the incorporated companies, foreign or domestic, doing business in the county for which he was elected, and in the city of St. Louis, and he shall receive compensation therefor from the county or city.

§ 10. It shall be the duty of the secretary of State to bind in books the reports received from corporations under this act, and to prepare and print, before each regular meeting of the general assembly, and to submit thereto, 250 copies of the condensed statement of the totals of each item required by this act to be reported.

§ 11. The circuit attorney shall for the city of St. Louis perform such duties as are in this act provided to be done by the prosecuting attorneys.

(Approved March 18, 1893.)

#### Act 9.

AN ACT in regard to aliens, and to restrict their right to acquire and hold real estate in this State.

Be it enacted by the general assembly of the State of Missouri, as follows:

Section 1. It shall be unlawful for any \* \* \* corporation not created by or under the laws of the United States or of some State or territory of the United States, to hereafter acquire, hold or own real estate so hereafter acquired, or any interest therein, in this State, except such as may be acquired by inheritance or in good faith in the ordinary course of justice in the collection of debts: Provided, That the prohibition of this section shall not apply to cases in which the right to hold or dispose of lands in the United States is secured by existing treaties to the citizens or subjects of foreign countries; which rights, so far as they may exist by force of any such treaty, shall continue to exist so long as such treaties are in force, and no longer.

§ 2. (As amended March 15, 1897.) No corporation or association more than twenty per centum of the stock of which is or may be owned by any person or persons, corporation or corporations, association or associations, not citizens of the United States, shall hereafter acquire or hold or own any real estate hereafter acquired in this State. Provided, That nothing contained in this act shall be construed to forbid any person or corporation from acquiring an interest in any real estate in this State as cestui que trust or mortgagee in any deed of trust or mortgage taken in good faith to secure the repayment of any money lent upon such real estate and interest thereon nor as assignee of such cestui que trust or mortgagee, nor to prevent the person or corporation lending such money or becoming such assignee from purchasing such real estate at its sale upon foreclosure of said deed of trust or mortgage when the amount for which such property is sold at said sale does not exceed the amount due under said deed of trust or mortgage at the time of such sale and the costs of such foreclosure: Provided, however, That all right, title or interest acquired by such person or corporation at such sale or foreclosure shall be forfeited to the State of Missouri unless such person or cor-



Co-trustee of foreign corporation; payment of wages — Acts, April 1, 8, 1895.

poration shall in good faith sell all of such right, title and interest to a citizen of the United States within five years after the person or corporation so purchasing at such sale or foreclosure shall have held the possession of such real estate according to the interest purchased or acquired by him or it at such sale or foreclosure.

§ 3. All property acquired, held or owned in violation of the provisions of this act shall be forfeited to the State of Missouri, and it shall be the duty of the attorney-general, or circuit or prosecuting attorney of the proper city or county, to enforce every such forfeiture by bill in equity or other proper process. And in any suit or proceeding that may be commenced to enforce the provisions of this act, it shall be the duty of the court to determine the very right of the matter, without regard to matters of form, joinder of parties, multifarianness [multifariousness], or other matters not affecting the substantial rights, either of the State or of the parties concerned, in any such proceeding arising out of the matters in this act mentioned.

(Approved April 1, 1895.)

See § 2508, subd. 4, and cross-references.

#### Act 10.

AN ACT to require a resident corporation or individual to be named as co-trustee in all cases where a foreign corporation or individual is named as trustee in deeds of trust and other conveyances.

Be it enacted by the general assembly of the State of Missouri, as follows:

Section 1. No foreign corporation or individual shall act as trustee in any deed of trust or other conveyance hereafter made by any person, firm or corporation, whereby any property, real or personal, situate or being in this State, is hereafter conveyed in trust for any purpose whatever, unless in such conveyance there shall be named as co-trustee a corporation organized under the laws of this State, and having power to act as trustee and execute trusts, or an individual citizen of the State of Missouri. No suit shall be brought to foreclose any such deed of trust, unless a resident trustee shall be a party plaintiff.

(Approved April 1, 1895.)

See Act of 1891, at p. 53.

#### Act 11.

AN ACT providing for the endowment of the State university, and for the establishment and endowment of free scholarships of merit therein in each county.

Be it enacted by the general assembly of the State of Missouri, as follows:

\* \* \* \* \*

§ 2. (As amended March 17, 1897.) In addition to the fees now provided by law, no corporation or association, other than those

formed for benevolent, religious, scientific, fraternal-beneficial or educational purposes, shall be created or organized under the laws of this State, and no foreign corporation shall do business in this State unless the persons named as corporators or the corporation shall, at or before the filing of the articles of association, or corporation, pay to the State treasurer, in trust for the State of Missouri, to be disposed of as hereinafter provided in this act, the sum of twenty-five hundredths of a dollar for every thousand dollars of the capital stock of such corporation or association as a franchise fee, and a like franchise fee shall be paid in the same manner on every thousand dollars of the increase of the capital stock of any corporation or association.

\* \* \* \* \*

(Approved April 1, 1895.)

#### Act 12.

AN ACT to provide for the payment of wages of labor in the lawful money of the United States.

Be it enacted by the general assembly of the State of Missouri, as follows:

Section 1. It shall not be lawful for any person, firm or corporation in this State to issue, pay out or circulate, for payment of the wages of labor, any order, note, check, memorandum, token, evidence of indebtedness, or other obligation, unless the same is negotiable and redeemable at its face value, in lawful money of the United States, by the person, firm or corporation issuing the same.

§ 2. All persons, firms or corporations issuing or circulating any such order, note, check, memorandum, token, evidence of indebtedness, or other obligation, shall be at all times during the business hours of the day prepared to redeem, and shall redeem, all such orders, notes, checks, memorandum, tokens, evidence of indebtedness, or other obligation, when presented at their place of business or office, at their face value, in good and lawful money of the United States, or in goods, at the option of the holder.

§ 3. Any person, firm or corporation, or the officer or officers of any corporation, who shall violate this act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than fifty (50) nor more than five hundred (500) dollars, or by imprisonment in the county jail, or by both such fine and imprisonment.

§ 4. All fines, exclusive of the expenses of the court, collected under and by virtue of this act shall be immediately paid into the treasury of the school trustees or board of each county where such fines are collected: Provided, however, That nothing contained herein shall be so construed as to apply to any municipality, township, county, or other subdivision of the State.

(Approved April 8, 1895.)

See § 2538.

Rights of employes to vote; employment of children — Acts, March 20, 23, 1897.

### Act 13.

AN ACT to amend an act entitled "An act to prevent corrupt practices in elections, to limit the expenses of candidates, to prescribe the duties of candidates and political committees, and provide penalties and remedies for violation of this act," approved March 31, 1893, by inserting between sections 4 and 5 three new sections, to be known as sections 4a, 4b and 4c.

Be it enacted by the general assembly of the State of Missouri, as follows:

(§ 1.) § 4a. Any person entitled to vote at any election in this State shall, on the day of such election, be entitled to absent himself from any services or employment in which he is then engaged or employed, for a period of four hours between the times of opening and closing the polls; and such voter shall not, because of so absenting himself, be liable to any penalty: Provided, however, That his employer may specify the hours during which such employe may absent himself as aforesaid. Any person or corporation who shall refuse to any employe the privilege hereby conferred, or shall discharge or threaten to discharge any employe for absenting himself from his work for the purpose of said election, or shall cause any employe to suffer any penalty or deduction of wages because of the exercise of such privilege, or who shall directly or indirectly violate the provisions of this section, shall be deemed guilty of a misdemeanor, and on conviction thereof be fined in any sum not exceeding five hundred dollars.

(§ 2.) § 4b. It shall not be lawful for any corporation organized and doing business under and by virtue of the laws of this State, to directly or indirectly, by or through any of its officers or agents, or by or through any person or persons for them, influence or attempt to influence the result of any election to be held in this State, or procure or endeavor to procure the election of any person to a public office by the use of money belonging to such corporation, or by subscribing any money to any campaign fund of any party or person, or by discharging or threatening to discharge any employe of such corporation for reason of the political opinions of such employe, or to use or offer to use any power, effort, influence or other means whatsoever, to induce or persuade any employe or other person entitled to register before or vote at any election, to vote or refrain from voting for any candidate, or on any question to be determined or at issue at any election. Any violation of the provisions of this section by a corporation shall be deemed and held as a forfeiture of its charter or franchise, as granted or derived from the State, as for willful misuser thereof, and such corporation shall be enjoined from transacting any business in this State; and such forfeiture or injunction may be ad-

judged by any circuit court of any county in which such corporation is located, in a suit instituted for that purpose, in the name of the State of Missouri, by the prosecuting attorney of any county, and in the city of St. Louis by the circuit attorney or by the attorney-general.

(§ 3.) § 4c. Every officer or agent of any railroad or other corporation, company or association, and every individual conducting or carrying on any business in this State and having under his control or supervision, or in his employ any servants, agents or other employes entitled to vote at any election in this State, who shall either directly or indirectly, or by or through any person or persons for him, discharge, or offer or attempt to discharge from any employment, service or position, any such employe for reason of the political opinions or belief of any such employe, or who shall coerce or attempt to coerce, intimidate or bribe any employe, or who shall by or through any unjust, corrupt or unlawful means, procure or attempt to procure or influence any employe entitled to register before or vote at any election, to vote or refrain from voting for any candidate for any public office at any election, or on any question to be determined or at issue in any election held in this State, shall be deemed guilty of a felony, and on conviction thereof, shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

(Approved March 20, 1897.)

### Act 14.

AN ACT to restrict the employment of children, and providing penalties for the violation thereof.

Be it enacted by the general assembly of the State of Missouri, as follows:

Section 1. No child under the age of fourteen years shall be employed in any manufacturing or mechanical establishment in this State wherein steam, water or any other mechanical power is used in the manufacturing process carried on therein, or, where the work to be done by such child would, in the opinion of two reputable physicians in the locality where such work is to be done, be dangerous to the health of such child.

§ 2. Any person, firm or corporation, or its agent, who employs, and any parent or person in charge of such child who permits the employment of such child in violation of this act, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined not less than ten nor more than one hundred dollars, or imprisonment in the county jail for a period of not less than two days nor more than ten days, or both fined and imprisoned, for each offense: Provided, That extreme poverty of the parent, or person in charge of such child, shall be a good defense to such proceeding.

(Approved March 23, 1897.)

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MONTANA.

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## LEGISLATIVE ACT OF 1897.





# MONTANA.

## CONSTITUTION OF MONTANA — 1889.

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE III.

##### Declaration of Rights.

- Sec. 11. Laws impairing the obligation of contracts prohibited.  
14. Private property not to be taken without compensation.

#### ARTICLE V.

##### Legislative Department.

- Sec. 26. Special or local laws prohibited in certain cases.  
37. Trust funds not to be invested in bonds or stock of private corporations.  
38. Legislature shall not authorize State or county to loan its credit for construction of any railroad.  
39. State shall not release or postpone liabilities of corporations to it.

#### ARTICLE XII.

##### Revenue and Taxation.

- Sec. 1. License tax may be imposed upon corporations.  
7. Power to tax corporations shall never be relinquished.  
17. "Property" includes stocks, bonds and franchises. But corporate stock shall not be taxed when corporate property is taxed.

#### ARTICLE XIII.

##### Public Indebtedness.

- Sec. 1. Neither the State nor any subdivision thereof shall loan its credit to, or subscribe to stock of, any private corporation.

#### ARTICLE XV.

##### Corporations other than Municipal.

- Sec. 1. Existing charters under which corporations not organized to have no validity.  
2. No charter to be granted or amended by special law.  
3. Legislature may alter, revoke or annul any charter.  
4. Provision for election of directors of corporations.  
5. Certain corporations shall be common carriers, and subject to legislative control.  
6. Transportation companies shall not consolidate with competing lines.

- Sec. 7. Discrimination in charges or facilities by common carriers prohibited.  
8. Certain existing corporations must file acceptance of provisions of this Constitution.  
9. Right of eminent domain and police power of State shall never be abridged.  
10. Stocks or bonds not to be issued except for value actually received; and all fictitious increase of stock or indebtedness void.  
11. Foreign corporations may do business in this State on certain conditions.  
12. No street or other railroad to be constructed within any municipality without consent of local authorities.  
13. Restrictions upon loans for benefit of corporations.  
14. Telegraph or telephone lines may be constructed subject to reasonable regulations.  
15. Consolidation of domestic and foreign corporations does not constitute foreign corporation.  
16. Release or discharge from liability for personal injuries as condition of employment prohibited.  
17. No law shall be passed permitting alienation of franchises so as to release any liabilities.  
18. "Corporation" construed; corporations may sue and be sued.  
19. Dues from corporations shall be secured.  
20. Trusts and combinations prohibited.

#### ARTICLE III.

##### Declaration of Rights.

§ 11. No ex post facto law nor law impairing the obligation of contracts or making any irrevocable grant of special privileges, franchises or immunities shall be passed by the legislative assembly.

See Const., art. XV, § 3; Civ. Code, §§ 394, 550.

§ 14. Private property shall not be taken or damaged for public use without just compensation having been first made to or paid into court for the owner.

#### ARTICLE V.

##### Legislative Department.

§ 26. The legislative assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:  
\* \* \* Chartering or licensing ferries or bridges or toll roads; chartering banks,

Taxation; public credit; corporations — Const., Arts. xii, §§ 1, 7, 17; xiii. § 1; xv, §§ 1-4.

insurance companies and loan and trust companies; remitting fines, penalties or forfeitures; \* \* \* granting to any corporation, association or individual the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever; \* \* \* relinquishing or extinguishing in whole or in part the indebtedness, liability or obligation of any corporation or person to this State, or to any municipal corporation therein; \* \* \* exempting property from taxation \* \* \*.

§ 37. No act of the legislative assembly shall authorize the investment of trust funds by executors, administrators, guardians or trustees in the bonds or stock of any private corporation.

§ 38. The legislative assembly shall have no power to pass any law authorizing the State, or any county in the State, to contract any debt or obligation in the construction of any railroad, nor give or loan its credit to or in aid of the construction of the same.

§ 39. No obligation or liability of any person, association or corporation, held or owned by the State, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released or postponed, or in any way diminished by the legislative assembly; nor shall such liability or obligation be extinguished, except by the payment thereof into the proper treasury.

## ARTICLE XII.

### Revenue and Taxation.

Section 1. \* \* \* The legislative assembly may also impose a license tax, both upon persons and upon corporations doing business in the State.

[A tax upon a corporation may be proportioned to the income received, as well as to the value of the privileges, or the property owned. *Minot v. R. R. Co.*, 18 Wall. 206. The fourteenth amendment to United States Constitution is a limitation upon power of the State in the matter of taxation. *R. R. Co. v. Carland*, 5 Mont. 146; s. c., 3 Pac. Rep. 134.]

§ 7. The power to tax corporations or corporate property shall never be relinquished or suspended, and all corporations in this State, or doing business therein, shall be subject to taxation for State, county, school, municipal and other purposes, on real and personal property owned or used by them and not by this Constitution exempted from taxation.

See Pol. Code, §§ 3701-3713.

§ 17. The word property as used in this article is hereby declared to include moneys, credits, bonds, stocks, franchises and all matters and things (real, personal and mixed) capable of private ownership, but this shall not be construed so as to authorize the taxation of the stocks of any company or corpo-

ration when the property of such company or corporation represented by such stocks is within the State and has been taxed.

See Political Code, § 3680.

## ARTICLE XIII.

### Public Indebtedness.

Section 1. Neither the State, nor any county, city, town, municipality, nor other subdivision of the State shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation, or become a subscriber to, or a shareholder in, any company or corporation, or a joint owner with any person, company or corporation, except as to such ownership as may accrue to the State by operation or provision of law.

## ARTICLE XV.

### Corporations other than Municipal.

Section 1. All existing charters, or grants of special or exclusive privileges, under which the corporations or grantees shall not have organized or commenced business in good faith at the time of the adoption of this Constitution, shall thereafter have no validity.

§ 2. No charter of incorporation shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory corporations as are or may be under the control of the State; but the legislative assembly shall provide by general law for the organization of corporations hereafter to be created; Provided, That any such laws shall be subject to future repeal or alterations by the legislative assembly.

See Civ. Code, §§ 390 et seq.

§ 3. The legislative assembly shall have the power to alter, revoke or annul any charter of incorporation existing at the time of the adoption of this Constitution, or which may be hereafter incorporated, whenever in its opinion it may be injurious to the citizens of the State.

See Civ. Code, §§ 394, 550; Const., art. III, § 11.

[Franchises conferred by legislature held to be contracts between territory and private citizens upon conditions which had to be complied with by law, like conditions precedent in ordinary contracts. *Territory v. Road Co.*, 2 Mont. 96. Unless such conditions were complied with, the franchises upon which they were based become subject to forfeiture. 2 Mont. 113.]

§ 4. The legislative assembly shall provide by law that in all elections for directors or trustees of incorporated companies, every stockholder shall have the right to vote in person or by proxy the number of shares of

## Corporations — Const., Art. xv, §§ 5-13.

stock owned by him for as many persons as there are directors or trustees to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit, and such directors or trustees shall not be elected in any other manner.

See Civ. Code, §§ 430-452. "Director" defined. Pen. Code, § 1000.

§ 5. All railroads shall be public highways, and all railroad, transportation and express companies shall be common carriers and subject to legislative control, and the legislative assembly shall have the power to regulate and control by law the rates of charges for the transportation of passengers and freight by such companies as common carriers from one point to another in the State. Any association or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any designated points within this State and to connect at the State line with railroads of other States and territories. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad.

§ 6. No railroad corporation, express or other transportation company, or the lessees or managers thereof, shall consolidate its stock, property or franchise, with any other railroad corporation, express or other transportation company, owning or having under its control a parallel or competing line; neither shall it in any manner unite its business or earnings with the business or earnings of any other railroad corporation; nor shall any officer of such railroad, express or other transportation company act as an officer of any other railroad, express or other transportation company owning or having control of a parallel or competing line.

§ 7. All individuals, associations, and corporations shall have equal rights to have persons or property transported on and over any railroad, transportation or express route in this State. No discrimination in charges or facilities for transportation of freight or passengers of the same class shall be made by any railroad, or transportation, or express company, between persons or places within this State; but excursion or commutation tickets may be issued and sold at special rates, provided such rates are the same to all persons. No railroad or transportation, or express company shall be allowed to charge, collect, or receive, under penalties which the legislative assembly shall prescribe, any greater charge or toll for the transportation of freight or passengers to any place or station upon its route or line, than it charges for the transportation of the same class of

freight or passengers to any more distant place or station upon its route or line within this State. No railroad, express, or transportation company, nor any lessee, manager, or other employe thereof, shall give any preference to any individual, association or corporation, in furnishing cars or motive power, or for the transportation of money or other express matter.

§ 8. No railroad, express, or other transportation company, in existence at the time of the adoption of this Constitution, shall have the benefit of any future legislation, without first filing in the office of the secretary of State an acceptance of the provisions of this Constitution in binding form.

§ 9. The right of eminent domain shall never be abridged, nor so construed as to prevent the legislative assembly from taking the property and franchises of incorporated companies, and subjecting them to public use the same as the property of individuals; and the police powers of the State shall never be abridged, or so construed, as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well-being of the State.

§ 10. No corporations shall issue stocks or bonds, except for labor done, services performed, or money and property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding a majority of the stock first obtained at a meeting held after at least thirty days' notice given in pursuance of law.

§ 11. No foreign corporation shall do any business in this State without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served. And no company or corporation formed under the laws of any other country, State or territory, shall have, or be allowed to exercise, or enjoy within this State any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of the State.

See Civ. Code, §§ 1030-1038.

§ 12. No street or other railroad shall be constructed within any city or town without the consent of the local authorities having control of the street or highway proposed to be occupied by such street or other railroad.

§ 13. The legislative assembly shall pass no law for the benefit of a railroad or other corporation, or any individual or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the State, a new liability in respect to transactions or considerations already passed.



§ 14. Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct or maintain lines of telegraph or telephone within this State, and connect the same with other lines; and the legislative assembly shall by general law of uniform operation provide reasonable regulations to give full effect to this section. No telegraph or telephone company shall consolidate with, or hold a controlling interest in, the stock or bonds of any other telegraph or telephone company owning or having the control of a competing line, or acquire by purchase or otherwise, any other competing line of telegraph or telephone.

§ 15. If any railroad, telegraph, telephone, express or other corporation or company organized under any of the laws of this State, shall consolidate, by sale or otherwise, with any railroad, telegraph, telephone, express, or other corporation, organized under any of the laws of any other State or territory of the United States, the same shall not thereby become a foreign corporation, but the courts of this State shall retain jurisdiction over that part of the corporate property within the limits of the State, in all matters that may arise as if said consolidation had not taken place.

§ 16. It shall be unlawful for any person, company or corporation to require of its servants or employes, as a condition of their employment or otherwise, any contract or agreement whereby such persons, company or corporation, shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employes while in the service of such person, company or corporation, by reason of the negligence of such person, company or corporation, or the agents or employes thereof; and such contracts shall be absolutely null and void.

§ 17. The legislative assembly shall not pass any law permitting the leasing or alienation of any franchise so as to release or relieve the franchise or property held thereunder from any of the liabilities of the lessor or grantor, or lessee or grantee, contracted or incurred in the operation, use or enjoyment of such franchise, or any of its privileges.

§ 18. The term "corporation," as used in this article, shall be held and construed to include all associations and joint-stock companies, having or exercising any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue, and shall be subject to be sued in all courts in like cases as natural persons, subject to such regulations and conditions as may be prescribed by law.

A corporation is a "person." Pol. Code, § 16. Corporation defined. Civ. Code, §§ 390, 391. Powers of. Civ. Code, § 520.

§ 19. Dues from private corporations shall be secured by such means as may be prescribed by law.

§ 20. No incorporation, stock company, person or association of persons in the State of Montana, shall directly, or indirectly, combine or form what is known as a trust, or make any contract with any person, or persons, corporations, or stock company, foreign or domestic, through their stockholders, trustees, or in any manner whatever, for the purpose of fixing the price, or regulating the production of any article of commerce, or of the product of the soil, for consumption by the people. The legislative assembly shall pass laws for the enforcement thereof by adequate penalties to the extent, if necessary for that purpose, of the forfeiture of their property and franchises, and in case of foreign corporations prohibiting them from carrying on business in the State.

## THE CODES AND STATUTES.

## I. POLITICAL CODE.

## Preliminary Provisions.

Sec. 16. Certain terms defined.

§ 16. \* \* \* The word "person" includes a corporation as well as a natural person; \* \* \*

Corporation defined. Const., art. XV, § 18; Civ. Code, § 390.

[The word "person" in fourteenth amendment to Constitution of United States includes a corporation. R. R. Tax Cases, 8 Saw. 235.]

## Part III. The Government of the State.

## TITLE X. REVENUE.

Ch. 2. Definitions.

3. Assessment of property.

## CHAPTER II.

## Definitions.

Sec. 3680. Definition of terms.

§ 3680. Whenever the terms mentioned in this section are employed in this title, they are employed in the sense hereafter affixed to them.

First. The term "property" includes moneys, credits, bonds, stocks, franchises and all other matters and things real, personal, and mixed, capable of private ownership; but this must not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the State and has been taxed.

\* \* \* \* \*

See Const., art. XII, § 17.

[Franchises are taxable. The Freight Case, 15 Wall. 282.]

## CHAPTER III.

## Assessment of Property.

Sec. 3701. Statement, what to contain.

3711. Property of a firm or corporation, where assessed.

3713. Capital stock and franchises of corporations, where assessed.

§ 3701. He (the assessor) must require from each person a statement under oath, setting forth specially all the real and personal property owned by such person, or in his possession, or under his control, at twelve o'clock m. on the first Monday in March. Such statement must be in writing, showing separately:

\* \* \* \* \*

3. All property belonging to, claimed by, or in the possession or under the control or management of any corporation of which such person is president, secretary, cashier or managing agent.

§ 3711. The property of every firm and corporation must be assessed in the county where the property is situate, and must be assessed in the name of the firm or corporation.

["This section does not apply to shares in a mining corporation constituted under the laws of this State, but whose tangible property is situated elsewhere." San Francisco v. Flood, 64 Cal. 504; s. c., 2 Pac. Rep. 264.]

Under U. S. Rev. St., §§ 5214, 5219, personal property owned by national banks is not subject to state taxation. First Nat. Bank v. Province, 51 Pac. Rep. 821.]

§ 3713. The capital stock and franchises of corporations and persons, except as may be otherwise provided, must be listed and taxed in the county, town or district where the principal office or place of business of such corporation or person is located; if there be no principal office or place of business in the State, then at the place in the State where any such corporation or person transacts business.

[Equity will interfere to prevent collection of taxes upon property to prevent destruction of a franchise. R. R. Co. v. Carland, 5 Mont. 146; s. c., 3 Pac. Rep. 134. Action by corporation to enjoin collection of tax, sufficiency of complaint. Ranching Co. v. Savage, 15 Mont. 189; s. c., 38 Pac. Rep. 940; see, also, Woolman v. Garringer, 2 Mont. 405; Collier v. Ervin, id. 556.]

## II. CIVIL CODE.

## DIVISION FIRST.

## Part IV. Corporations.

Tit. I. General provisions as to all corporations.  
XI. Foreign corporations.

## TITLE I. GENERAL PROVISIONS AS TO ALL CORPORATIONS.

Ch. 1. Formation of corporations.

2. Corporate stock.

3. Corporate powers.

4. Extinction and dissolution of corporations.

## CHAPTER I.

## Formation of Corporations.

Art. I. Corporations defined and how organized.  
II. By-laws, directors, elections and meetings.

## ARTICLE I. CORPORATIONS DEFINED AND HOW ORGANIZED.

Sec. 390. Corporation defined.

391. What are public and what private corporations.

392. Corporations, how formed.

Sec. 393. For what purposes private corporations are formed.

394. Reservation of power to repeal.
395. Corporate existence cannot be questioned.
396. Name.
397. Corporate name may be changed.
398. Record of change.
400. How corporations may continue their existence under this Code.
401. Existing corporations not affected.
402. Name of instrument creating corporation.
403. Articles of incorporation, what to contain.
404. Certain corporations to state further facts in articles.
405. Three or more persons to sign and acknowledge articles.
406. Articles to be filed with county clerk and secretary of State; term of existence.
407. Certified copy of articles prima facie evidence.
408. Who are members and who are stockholders of corporation.
409. Filing articles of incorporation.
410. Stock issued for purchase of property.
411. Corporations, how formed.
412. May extend term of existence and increase stock, etc.
413. How change effected.
414. Same.

§ 390. A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes.

A corporation is a "person." Pol. Code, § 16. Powers of. See §§ 520 et seq., post.

§ 391. Corporations are either public or private. Public corporations are formed or organized for the government of a portion of the State; all other corporations are private.

§ 392. Private corporations may be formed by the voluntary association of any three or more persons in the manner prescribed in this article.

§ 393. The purposes for which the private corporations mentioned in the last section are.

1. The support of public worship.
2. The support of any religious, benevolent, charitable, educational or missionary undertaking.
3. The support of any literary or scientific undertaking, the maintenance of a library, or the promotion of painting, music or other fine arts.
4. The encouragement of agriculture and horticulture.
5. The maintenance of public parks, and of facilities for skating and other innocent sports.
6. The maintenance of a club for social enjoyment.
7. The maintenance of a public or private cemetery.
8. The prevention and punishment of theft or willful injuries to property and insurance against such risks.
9. The insurance of human life, dealing in annuities, and the insurance of fidelity of

persons holding places of public or private trust.

10. The insurance of human beings against sickness or personal injury.

11. The insurance of the lives of domestic animals or their loss or damage.

12. The insurance of property against marine risks.

13. The insurance of property against loss or injury by fire, or any of the elements, or by accident, or by any risk of inland transportation.

14. The transaction of any banking business or trust deposit and security business, and the insurance of the safe-keeping of all kinds of personal property.

15. The construction and maintenance of a railroad and of a telegraph line in connection therewith and a street railroad of any kind.

16. The construction and maintenance of any other species of roads, and of bridges in connection therewith.

17. The construction and maintenance of a bridge.

18. The construction and maintenance of a telegraph line, telephone or electric line.

19. The establishment and maintenance of a line of stages.

20. The establishment and maintenance of a ferry.

21. The carriage of property and persons by express.

22. The building and navigation of steamboats and carriage of persons and property thereon.

23. The supply of water to the public.

24. The manufacture and supply of gas, or the supply of light or heat to the public by any other means.

25. The transaction of any mercantile, commercial, industrial, manufacturing, mining, mechanical or chemical business.

26. The transaction of a printing and publishing business.

27. The erection of buildings and the accumulation and loan of funds for the purchase of real estate.

28. The establishment and maintenance of a hotel.

29. The improvement of the breed of domestic animals by importation, sale or otherwise.

30. The transaction of the business of raising, buying and selling cattle, horses and sheep; or

31. The construction of canals, ditches, flumes and other works for conveying water, and reservoirs for storing the same, and the boring of artesian wells.

No corporation must be formed for any other purposes than those mentioned in this section.

[Held, that corporation could be formed for mercantile purposes under general incorporation act of the territory, and that said act was not in conflict with § 1889, U. S. Rev. St. Carver Mercantile Co. v. Hulme, 7 Mont. 566; s. c., 19 Pac. Rep. 213.]



Name; continuance; articles of incorporation — Civ. Code, §§ 394-404.

§ 394. Every grant of corporate power is subject to alteration, suspension or repeal, in the discretion of the legislative assembly.

See Const., art. XV, § 3; art. III, § 11.

§ 395. One who assumes an obligation to an ostensible corporation, as such, cannot resist the obligation on the ground that there was in fact no such corporation until that fact has been adjudged in a direct proceeding for the purpose.

§ 396. Every corporation must have a corporate name, which it has no power to change unless expressly authorized by law; but the name is to be deemed so far matter of description, that a mistake in the name in any instrument may be disregarded, if a sufficient description remains by which to ascertain the corporation intended.

§ 397. The name of any corporation now organized and existing or which may hereafter be organized under any of the statutes of this State relating to corporations may be altered, changed or amended by a vote of a majority of the stockholders of such corporation duly assembled at any regular meeting or at any special meeting duly called for that purpose.

(Approved March 2, 1893.)

§ 398. Whenever the name of a corporation is changed, altered or amended under the provisions of this act it shall be the duty of the secretary thereof to certify the same for record to the secretary of State and to the county clerk of the county wherein the principal place of business of such corporation is situated.

(Approved March 2, 1893.)

§ 399. Nothing in this act contained shall impair or affect any liability or obligation of any corporation whose name is changed, altered or amended hereunder.

(Approved March 2, 1893.)

§ 400. Any corporation formed under the laws of the territory or State of Montana, except those dissolved by the provisions of section 393, and still existing, may at any time within the period limited for its duration elect to continue its existence under the provisions of this Code applicable thereto. Such election may be made at any annual meeting of the stockholders, or members, or at any meeting called by the directors expressly for considering the subject, if voted by stockholders representing a majority of the capital stock, or by a majority of the members, or may be made by the directors upon the written consent of that number of such stockholders or members. A certificate of the action of the directors, signed by them and their secretary, when the election is made by their unanimous vote, or upon the written consent of the stockholders or members, or a certificate of the proceedings of the stockholders or members, when such election is made at any such meeting, signed by the chairman and secretary of the meeting, and a majority of the directors, must

be filed in the office of the clerk of the county where the original articles of incorporation are filed, and a certified copy thereof must be filed in the office of the secretary of State; and thereafter the corporation shall continue its existence under the provisions of this Code which are applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions, and limitations prescribed thereby.

§ 401. (As amended March 5, 1897.) No corporation formed or existing before twelve o'clock noon on the first day of July, A. D. 1895, when this Code takes effect is or shall be in any manner affected by any of the provisions of part IV of division first of this Code, except those provisions which specially mention and are made applicable to corporations formed and existing before said time, or unless such corporations elect to continue their existence under the provisions of this Code applicable thereto as provided in section 400 of this Code; but all the laws of the State of Montana in force and applicable to said previously formed and existing corporations at twelve o'clock noon on the said first day of July, A. D., 1895, when this Code takes effect, shall continue to apply and govern such previously formed and existing corporations in all respects, as well in relation to their formation and existence as to their operation, management and all other matters and things contained in said laws and relating and applicable to such corporations, and said laws are repealed subject to the provisions of this section.

§ 402. The instrument by which a private corporation is formed is called "articles of incorporation."

§ 403. Articles of incorporation must be prepared, setting forth:

1. The name of the corporation.
2. The purpose for which it is formed.
3. The place where its principal business is to be transacted.
4. The term for which it is to exist, not exceeding twenty years.
5. The number of its directors or trustees, which shall not be less than three nor more than thirteen, and the names and residences of those who are appointed for the first three months and until their successors are elected and qualified.
6. The amount of its capital stock, and the number of shares into which it is divided.
7. If there is a capital stock the amount actually subscribed, and by whom.
8. If the stock is assessable it must be so stated.

[Articles of incorporation held admissible on question of agent's authority to buy up a claim against another company. *Mahoney v. Butte Hardware Co.*, 48 Pac. Rep. 545.]

§ 404. The articles of incorporation in the following cases must also state:

1. In case of assessment life insurance corporations, the articles of incorporation shall

state as provided in sections 701 and 702 of this Code.

2. And in articles of incorporation of institutions of learning, shall state as provided in section 752 of this Code.

3. And in case of building and loan associations the corporation shall be formed as provided in sections 770 to 776, inclusive, of this Code.

4. In case of religious, benevolent and other like incorporations, the articles of incorporation shall state as provided in section 862 of this Code.

5. Articles of incorporation of any railroad company shall also state the names of the counties, States, territories and countries where the termini of said road are to be located, and those through which said road shall pass, and the general route of said road, also the amount of capital stock necessary to construct the same.

6. In case of the formation of corporations for the construction of ditches and flumes, the articles of incorporation must also state the stream or streams from which the water is to be taken, the point or place on said stream at or near which the water is to be taken out, the line of the ditch or flume, and the use to which the water is to be applied.

7. In case of tunnel corporations, the articles of incorporation shall also state the place where said tunnel is to be run, the termini, its course, and the minerals or ore designed to be excavated.

8. In the case of telegraph or telephone companies, the articles of incorporation shall also state the termini of such line or lines, and the counties through which they shall pass.

§ 405. The articles of incorporation must be subscribed by three or more persons, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property.

§ 406. Upon filing and recording articles of incorporation, in the office of the county clerk of the county in which the principal business of the company is to be transacted, and a copy thereof, certified by the county clerk, with the secretary of State, the secretary must issue to the corporation, over the great seal of the State, a certificate that a copy of the articles, containing the required statement of facts has been filed in his office; and thereupon the persons signing the articles, and their associates and successors, shall be a body politic and corporate, by the name stated in the certificate, and for the term of twenty years, unless it is in the articles of incorporation otherwise stated, or in this Code otherwise specially provided; and in no case must such term exceed twenty years.

[Prior to adoption of Code, a corporation had legal existence from date of filing certificate. *Mining Co. v. Woodbury*, 14 Cal. 424.]

§ 407. A copy of any articles of incorporation filed in pursuance of this chapter, and

certified by the secretary of State, must be received in all courts and other places as prima facie evidence of the facts therein stated.

[Certified copy of articles of incorporation competent as evidence. *McKinstry v. Clark*, 4 Mont. 370; s. c., 1 Pac. Rep. 759; *Min. Co. v. Hammer*, 6 Mont. 53; s. c., 8 Pac. Rep. 153; *S. V. W. W. v. San Francisco*, 22 Cal. 434; *Min. Co. v. Allment*, 26 id. 286.

Articles of incorporation of foreign corporation admissible in evidence, when. *Parchen v. Peck*, 2 Mont. 567.]

§ 408. The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the corporators and their successors are called members.

[Stockholders held entitled to sue to set aside a fraudulent purchase made by a corporation without first demanding of the directors that suit be brought. *Gerry v. Bismarck Bank of N. D.*, 47 Pac. Rep. 810.]

§ 409. No corporation hereafter formed shall purchase, locate, or hold property in any county in this State, without filing a copy of the copy of its articles of incorporation filed in the office of the secretary of State, duly certified by such secretary of State, in the office of the county clerk of the county in which such property is situated, within sixty days after such purchase or location is made. Every corporation now in existence, whether formed under the provisions of this Code or not, must, within ninety days after the passage of this Code, file such certified copy of the copy of its articles of incorporation in the office of the county clerk of every county in this State in which it holds any property, except the county where the original articles of incorporation are filed; and if any corporation hereafter acquire any property in a county other than that in which it now holds property, it must, within ninety days thereafter, file with the clerk of such county such certified copy of the copy of its articles of incorporation. The copies so filed with the several county clerks and certified copies thereof shall have the same force and effect in evidence as would the originals. Any corporation failing to comply with the provisions of this section shall not maintain or defend any action or proceeding in relation to such property, its rents, issues, or profits, until such articles of incorporation and such certified copy of its articles of incorporation shall be filed at the places directed by the general law and this section; Provided, That all corporations shall be liable in damages for any real loss that may arise by the failure of such corporation to perform any of the foregoing duties within the time mentioned in this section; And provided further, That the said damages may be recovered in an action brought in any



Issue of stock; increase or decrease of capital — Civ. Code, §§ 410-413.

court of this State of competent jurisdiction, by any party or parties suffering the same.

§ 410. The directors of any corporation may purchase mines, manufactories and other property necessary for its business and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be declared and taken to be full paid stock and not liable to any further call, neither shall the holders thereof be liable for any further payments under the provisions of section 470 this Code; Provided, That on mines any arbitrary value may be fixed and such value shall, regardless of the actual value, be deemed the value thereof, so as to make the stock issued in payment therefor at such arbitrary value, full paid stock as above defined; and wherever stock has been heretofore issued by corporations in payment for mines purchased by it, such stock so issued shall be deemed full paid stock regardless of the actual value of the mine at the time of such purchase. In all statements and reports of the corporation to be published, this stock shall not be stated or reported as being issued for cash paid into the corporation, but shall be reported in this respect according to the facts.

(Act approved March 7, 1895.)

[Party claiming title to a mine through a commercial corporation is estopped to deny right of such corporation to take and hold title to mining property. *Hardware Co. v. Cobban*, 13 Mont. 351; s. c., 34 Pac. Rep. 24; *Bank v. Roberts*, 9 Mont. 323; s. c., 23 Pac. Rep. 718.]

§ 411. At any time hereafter, any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical, or chemical business; of digging ditches, of building flumes, or running tunnels; of purchasing, holding, developing, improving, using, leasing, selling, conveying, or otherwise disposing of water powers and the sites thereof and lands necessary or useful therefor, or for the industries and habitations arising or growing up, or to arise or grow up, in connection with or about the same; of purchasing, holding, laying out, platting, developing, leasing, selling, dealing in, conveying or otherwise using or disposing of town-sites or towns, or the lots, blocks or subdivisions thereof, or lots, blocks or subdivisions in any town, village or city; or of carrying on any other branch of business designed to aid in the industrial or productive interests of the country and the developments thereof, or of one or more of the aforesaid branches of business, may make, sign and acknowledge before some officer competent to take acknowledgments of deeds, and file in the office of the clerk of the county in which the business of the company shall be carried on, and a duplicate thereof in the office of the secretary of State, a certificate in writing, in which shall be stated the corporate name of said company and the object or objects for which the com-

pany shall be formed, the amount of the capital stock of said company, the term of its existence, not exceeding forty years, the number of shares of which the said stock shall consist, the number of trustees, and their names, who shall manage the concerns of the said company for the first three months, and the name of the city, town or locality and the county in which the operations of said company shall be carried on.

(Act approved March 2, 1893.)

§ 412. Any corporation or company heretofore formed, either by special act or under the general law, and now existing, or any company which may be formed under this chapter, may increase or diminish its capital stock, by complying with the provisions of this chapter, to any amount which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other branch named in section 446 of this chapter and may also extend the term of its existence, subject to the provisions and liabilities of this chapter; Provided, however, That no corporation shall have power under this chapter to extend the term of existence for a period longer than will make the term of existence of said corporation longer in all than forty years from the date of its original incorporation; and before any corporation shall be entitled to diminish the amount of its capital stock, if the amounts of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital; and any existing company heretofore formed under any special act may come under and avail itself of the provisions of this chapter, by complying with the following provisions, and thereupon such company, its officers and stockholders, shall be subject to all restrictions, duties and liabilities of this chapter.

(Act approved March 2, 1893.)

§ 413. Whenever any company shall decide to call a meeting of stockholders for the purpose of availing itself of the privileges of this chapter, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business, or for extending the term of its existence, it shall be the duty of the trustees to publish a notice, signed by at least a majority of them, in a newspaper in the county, if any shall be published therein, at least six successive weeks, and to deposit a written or printed copy thereof in the post-office, addressed to each stockholder at his usual place of residence, at least six weeks previous to the day fixed for holding such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, and the business to which the company would be extended or changed, and the length of the



Increase or decrease of capital: by-laws — Civ. Code, §§ 414, 430-432.

time for which it is proposed to extend the term of the existence of the corporation; and a vote of at last two-thirds of all the shares of stock shall be necessary for an increase or diminution of the amount of its capital stock, or the extension or change of its business, or the extension of the term of its existence as aforesaid, or to enable the company to avail itself of the provisions of this chapter.

(Approved March 2, 1893.)

§ 414. If, at the time and place specified in the notice provided for in the preceding sections of this chapter, stockholders shall appear in person or by proxy, in number representing not less than two-thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present in person or by proxy, and if, on canvassing the votes, it shall appear that a sufficient number of votes have been cast in favor of increasing or diminishing the amount of the capital stock, or for extending or changing the business, or of extending the term of existence of the corporation as aforesaid, or for availing itself of the privileges and provisions of this chapter, a certificate of the proceedings showing a compliance with the provisions of this chapter, the amount of capital actually paid in, the business to which it is extended or changed, the time for which the term of the existence of the corporation is extended, the whole amount of debts and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary, and such certificate shall be acknowledged by the chairman and filed and recorded as required by section 446 of this chapter, and when so filed and recorded the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, and the business extended or changed, and the term of the existence of the corporation extended as in said certificate specified, and the company shall be entitled to the privileges and provisions and be subject to the liabilities of this chapter, as the case may be.

(Act approved March 2, 1893.)

## ARTICLE II. BY-LAWS, DIRECTORS, ELECTIONS AND MEETINGS.

Sec. 430. Adoption of by-laws, when, how and by whom.

431. Directors, election of.
432. By-laws may provide for what.
433. By-laws recorded and how amended.
434. How many and who to be directors.
435. Directors must be elected and by-laws adopted at first meeting.
436. Election, how conducted.
437. Organization of board of directors, etc.
438. Dividends to be made from surplus profits.
439. Removal of directors.

Sec. 440. Justice of the peace may order meeting, when.

441. Majority of stock must be represented.
442. Stock of minors, etc.
443. Election may be postponed.
444. Complaints as to elections.
445. False certificate, report or notice, officers liable.
446. Meeting by consent valid.
447. Proceedings at meeting to be binding.
448. Meetings, when held.
449. Special meeting, how called.
450. How corporation may change its business.
451. Report of directors.
452. Payment for subscribed stock.

§ 430. Every corporation formed under this title must, within one month after filing articles of incorporation, adopt a code of by-laws for its government, not inconsistent with the Constitution and laws of this State. The assent of stockholders representing a majority of all the subscribed capital stock, or a majority of the members, if there be no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in the event of such meeting being called, two weeks' notice of the same by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a newspaper published in an adjoining county, must be given by order of the acting president. The written assent of the holders of two-thirds of the stock, or of two-thirds of the members, if there be no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose.

See § 520(6), post.

§ 431. The directors must be elected annually by the stockholders or members, and if no provision is made by the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of such election must be given, and the right to vote determined as prescribed in section 430.

See §§ 434, 435, 443, 444, post.

§ 432. A corporation may, by its by-laws, where no other provision is specially made, provide for:

1. The time, place, and manner of calling and conducting its meetings.
2. The number of stockholders or members constituting a quorum.
3. The mode of voting by proxy.
4. The time of the annual election of directors, and the mode and manner of giving notice thereof.
5. The compensation and duties of officers.
6. The manner of election and the tenure of office of all officers other than directors; and,

## By-laws; directors; dividends — Civ. Code, §§ 433-438.

7. Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars for any one offense.

§ 433. All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand, in some book kept in the office of the corporation, to be known as the "Book of By-laws," and no by-law shall take effect until so copied, and the book shall then be open to the inspection of the public during office hours of each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted, at the annual meeting, or at any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or by two-thirds of the members. The written assent of the holders of two-thirds of the stock, or two-thirds of the members, if there be no capital stock, shall be effectual to repeal or amend any by-law, or to adopt additional by-laws. The power to repeal and amend the by-laws, and adopt new by-laws, may, by a similar vote at any such meeting, or similar written assent, be delegated to the board of directors. The power, when delegated, may be revoked, by a similar vote, at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it shall be copied in the book of by-laws, with the original by-laws, and immediately after them, and shall not take effect until so copied. If any by-law be repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, or written consent was filed, shall be stated in said book, and until so stated the repeal shall not take effect.

§ 434. The corporate powers, business and property of all corporations formed under this title must be exercised, conducted and controlled by a board of not less than three nor more than thirteen directors, to be elected from among the holders of stock, or, where there is no capital stock, then from the members of such corporations. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation, except those named in the articles of incorporation for the first three months, who shall be directors until their successors are elected and qualified. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board.

Directors, when and how elected. § 431.

[Stockholders held entitled to sue to set aside a fraudulent purchase made by a corporation

without first demanding of the directors that suit be brought. *Gerry v. Bismarck Bank of N. D.*, 47 Pac. Rep. 810.]

§ 435. At the meeting at which the by-laws are adopted or at such subsequent meeting as may be then designated, directors must be elected, to hold their offices for one year, and until their successors are elected and qualified.

§ 436. All elections must be by ballot, and every stockholder shall have the right to vote in person or by proxy the number of shares standing in his name, as provided in section 441 of this Code, for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. In corporations having no capital stock each member of the corporation may cast as many votes for one director as there are directors to be elected, or may distribute the same among any or all of the candidates. In either case the directors receiving the highest number of votes shall be declared elected.

Elections, how conducted. § 441.

§ 437. Immediately after their election, the directors must organize by the election of a president, who must be one of their number, a secretary and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board made, when duly assembled, is valid as a corporate act.

[A president of a corporation who sold property to the company through fraud could not demand that he be put in statu quo before relief was granted the company. *Gerry v. Bismarck Bank of North Dakota*, 47 Pac. Rep. 810.

A purchase by a corporation from its president held fraudulent. *Id.*

A town site corporation held not liable for plans of buildings made at instance of the president without evidence of his authority. *Mathias v. White Sulphur Springs*, 48 Pac. Rep. 624.]

§ 438. The directors of corporations must not make dividends, except from the surplus profits arising from the business thereof; nor must they divide, withdraw or pay to the stockholders, or any of them, any part of the capital stock; nor must they create debts beyond their subscribed capital stock, or reduce or increase the capital stock, except as hereinafter specially provided. For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who

## Removal of directors; election — Civ. Code, §§ 439-445.

may have caused their dissent therefrom to be entered at large in the minutes of the directors at the time, or were not present when the same did happen) are, in their individual and private capacity, jointly and severally liable to the corporation and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out or reduced, or debt contracted; and no statute of limitations is a bar to any suit against such directors for any sums for which they are made liable by this section. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence.

Violation of above section a misdemeanor. Pen. Code, § 984.

§ 439. No director shall be removed from office unless by a vote of two-thirds of the members, or of stockholders holding two-thirds of the capital stock, at a general meeting held after previous notice of the time and place and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president or a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing, and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose orders it is called. If the secretary refuse to give the notice, or if there is none, the call may be addressed directly to the members or stockholders and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in section 430 of this title, unless other express provision has been made therefor in the by-laws. In case of removal the vacancy may be filled by election at the same meeting.

§ 440. Whenever, from any cause, there is no person authorized to call or to preside at the meeting of a corporation, any justice of the peace of the county where such corporation is established may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members directing him to call a meeting of the corporation by giving the notice required, and the justice may in the same warrant direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat.

§ 441. At all elections or votes had for any purpose there must be a majority of the subscribed capital stock or of the members represented, either in person or by proxy in writing. Every person acting therein, in person or by proxy or representa-

tive, must be a member thereof or a bona fide stockholder, having stock in his own name on the stock-books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of any stockholders or members, and may be set aside by petition to the district court of the county where the same was held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election had, such adjournment and the reasons therefor being recorded in the journal of the proceedings of the board of directors.

Notice of meeting. § 431.

§ 442. The shares of stock of an estate of a minor, or person of unsound mind, may be represented by his guardian, and of a deceased person by his executor or administrator.

§ 443. If from any cause an election does not take place on the day appointed in the by-laws, it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders as provided in section 439 of this article.

§ 444. Upon the application of any person or body corporate aggrieved by any election held by any corporate body, the district court of the district in which such election was held, or a judge thereof, must proceed forthwith to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Upon filing the petition, and before any further proceedings are had under this section, five days' notice of the hearing must be given, under the direction of the court or the judge thereof, to the adverse party or those to be affected thereby.

§ 445. Any officer of a corporation who willfully gives a certificate, or willfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable.

[Statute making trustees jointly and severally liable upon a failure to file annual report, though



## Meetings; change of office and directors; reports — Civ. Code, §§ 446-452.

a penal statute requiring strict construction, cannot be construed to excuse such trustees from liability for debts contracted prior to a default. *Gans v. Switzer*, 9 Mont. 408; s. c., 24 Pac. Rep. 18. Defense by such trustees to such action, what is. *Id.*

Above section renders officer liable only for debts incurred after making false annual report. *Giddings v. Holter*, 48 Pac. Rep. 8; *Same v. Castle Land Co.*, *id.*; see *Comp. St.* 1887, div. 5, § 463.]

§ 446. When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the acts and proceedings of such meeting are as valid as if had at a meeting legally called and noticed.

§ 447. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

§ 448. The meetings of the stockholders and board of directors of a corporation must be held at its office or principal place of business.

§ 449. When no provision is made in the by-laws for regular meetings of the directors and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there is none, on the order of two directors.

§ 450. Every corporation that has been or may be created under the general laws of this State may change its principal place of business from one place to another in the same county, or from one city or county to another city or county within this State, and may increase or diminish the number of its trustees or directors; Provided, That the number of trustees or directors shall at no time be less than three or more than thirteen. Before either such changes are made, the consent, in writing, of the holders of two-thirds of the capital stock must be obtained and filed in the office of the corporation. When such consent is obtained and filed, notice of the intended removal or change, or of the intended increase or diminishment of the number of trustees or directors, as the case may be, must be published at least once a week for three successive weeks in some newspaper published in the county wherein said principal place of business is situated, if there is one published therein; if not, in a newspaper of an adjoining county, giving the name of the county or city where it is situated, and that to which it is intended to remove it, or the number to which it is intended to increase or diminish the trustees or directors.

(Act approved March 18, 1895.)

§ 451. Every corporation having a capital stock, shall annually, within twenty days from and after the first day of September,

make a report which shall state the amount of capital and the proportion thereof actually paid in and the amount of existing debts, and which shall be signed by the president, and a majority of the directors inclusive of the president and shall be verified by the oath of the president, vice-president or secretary of such corporation; and shall be published in some newspaper of the town, city or village, or, if there be no newspaper published there, then in some newspaper published in some city, town or village nearest to the principal office or place of business of such corporation and filed in the office of the clerk of the county where the principal office or place of business of such corporation shall be located. If any such corporation shall fail so to do, all the directors of the corporation shall be jointly and severally liable for all debts of the corporation then existing or which may be thereafter contracted until such report shall be made and published or filed; Provided, however, That if within ten days after such failure, a director or directors shall make and publish or file as aforesaid an affidavit or affidavits stating the failure was due to no fault of his or theirs, and stating also that within the said twenty days, he or they requested the president or a sufficient number of the other directors whose residence was known to the affiant to join with him or them in making report, such directors or director shall not be liable under this section. If the required report be made and published or filed after the time herein specified the directors shall not, on account of the prior failure to make report, be liable for the debts thereafter contracted.

(Approved March 14, 1895.)

[Contingent liability of land company on warranty of title held not "an existing debt" within meaning of above section. See *Comp. St.* 1887, div. 5, § 460; *Giddings v. Holter*, 48 Pac. Rep. 8; *Same v. Castle Land Co.*, *id.*]

§ 452. It shall be lawful for the directors to call in and demand from the stockholders, respectively, all such sums of money by them subscribed, at such times and in such payments or installments as the directors shall deem proper, not to exceed twenty per cent. in any one month, under the penalty of forfeiting the shares of stock subscribed for, and for all previous payments made thereon, if payment shall not be made by the stockholders within sixty days after a personal demand or notice requiring such payment shall have been published for six successive weeks in the newspaper nearest the place where the business of the company shall be carried on as aforesaid.

[Trustees held liable as copartners. *Teitig v. Boesman*, 12 Mont. 405; s. c., 31 Pac. Rep. 371; see note to § 445.]

**CHAPTER II.****Corporate Stock.****ARTICLE I. STOCK AND STOCKHOLDERS.**

Sec. 470. Liability of stockholders.

471. Certificates, how and when issued.

472. Transfer of shares.

473. Same by married woman, and dividends.

474. Non-resident stockholders, and bonds.

475. Five per cent. of stock may demand statement.

476. Loan to stockholders.

§ 470. The stockholders of every corporation shall be severally and individually liable to the creditors of the corporation in which they are stockholders, to the amount of unpaid stock held by them respectively, for all acts and contracts made by such corporation, until the whole amount of capital stock subscribed for shall have been paid in.

Frauds in subscriptions for, and issue of, stock. Pen. Code, §§ 980 et seq.

[Subscription to stock of a corporation, to be thereafter organized, becomes a valid contract upon acceptance by subscriber of the shares subscribed for. *Pub. Co. v. Jack*, 5 Mont. 568; s. c., 6 Pac. Rep. 20. Liability of delinquent subscriber. *Kane v. Downing*, 14 Mont. 343; s. c., 36 Pac. Rep. 355. The action authorized by section 470 does not exclude the equitable remedy to enforce payment of assessments. *Harmon v. Page*, 62 Cal. 448. But otherwise in case of mining corporation. *In re South Mt. M. Co.*, 7 Saw. 30; s. c., 8 id. 366.]

§ 471. All corporations for profit must issue certificates for stock when fully paid up, signed by the president and secretary, and may provide, in their by-laws, for issuing certificates prior to the full payment, under such restrictions and for such purposes as their by-laws may provide.

§ 472. Whenever the capital stock of any corporation is divided into shares, and certificates therefor are issued, such shares of stock are personal property, and may be transferred by indorsement by the signature of the owner, or his attorney or legal representative, and delivery of the certificate; but such transfer is not valid, except between the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties by and to whom transferred, the number or designation of the shares, and the date of the transfer.

[Held, that assignment of certificate and learning same with secretary of corporation did not transfer stock. *Galvin v. M. & M. Co.*, 37 Pac. Rep. 366.]

Evidence held to justify a finding that plaintiff did not purchase stock, the certificate of which was delivered to him. *Parberry v. Sheep Co.*, 45 Pac. Rep. 278.]

§ 473. Shares of stock in corporations held or owned by a married woman may be transferred by her, her agent

or attorney, without the signature of her husband, in the same manner as if such married woman were a feme sole. All dividends payable upon any shares of stock of a corporation held by a married woman may be paid to such married woman, her agent or attorney, in the same manner as if she were unmarried, and it is not necessary for her husband to join in a receipt therefor; and any proxy or power given by a married woman, touching any shares of stock of any corporation owned by her is valid and binding without the signature of her husband, the same as if she were unmarried.

§ 474. When the shares of stock in a corporation are owned by persons residing out of the State, the president, secretary, or directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant a bond of indemnity, with two sureties, satisfactory to the officers of the corporation, or, if not so satisfactory, then one approved by the judge of the district court of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares, in case of his or her death before the transfer; and if such affidavit or other evidence or bond be not furnished when required, as herein provided, neither the corporation, nor any officer thereof, shall be liable for refusing to enter the transfer on the books of the corporation.

[Fact that aliens owning stock in a mining corporation held not to affect title of corporation to its mines; also, semble, that even if alien were a cestui que trust of such property, his title would be good until office found. *Min. Co. v. Bank*, 7 Mont. 530; s. c., 19 Pac. Rep. 210.]

§ 475. Whenever any person or persons owning five per cent. of the capital stock of any corporation, shall present a written request to the treasurer thereof that they desire a statement of the affairs of such corporation, it shall be the duty of such treasurer to make a statement of the affairs of the corporation, under oath, embracing a particular account of all its assets and liabilities in minute detail, and to deliver such statement to the persons who presented the said written request to said treasurer within twenty days after such presentation, and shall also, at the same time, place and keep on file in his office for six months thereafter a copy of such statement, which shall, at all times during business hours, be exhibited



## Assessment of stock — Civ. Code, §§ 490-495.

to any stockholder of said corporation demanding an examination thereof; such treasurer, however, shall not be required to deliver such statement in the manner aforesaid oftener than once in six months. If such treasurer shall neglect or refuse to comply with any provisions of this chapter, he shall forfeit and pay to the person presenting said request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof.

§ 476. No loan of money shall be made by any corporation to any stockholder therein, and if any such loan shall be made to a stockholder, the officer who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan and interest, for all the debts of the corporation contracted before the repayment of the sum loaned.

## ARTICLE II. ASSESSMENT OF STOCK.

- Sec. 490. Directors may levy assessment.  
 491. Limitation.  
 492. Levy of assessment; unpaid assessment.  
 493. Contents of order for assessment.  
 494. Notice of assessment, form.  
 495. Publication and services.  
 496. Delinquent notice, form.  
 497. Contents of notice.  
 498. How published.  
 499. Jurisdiction acquired, how.  
 500. Sale to be at public auction.  
 501. Highest bidder to be purchaser.  
 502. Corporation may purchase in default of bidder.  
 503. Disposition of stock purchased by corporation.  
 504. Extension of time of delinquent sale.  
 505. Assessment shall not be invalidated.  
 506. Action for recovery of stock, limitation.  
 507. Affidavits to be filed.  
 508. Waiver of sale.  
 509. To what corporation applicable.  
 510. Other corporations may make stock assessable.  
 511. Stock may be made assessable.

§ 490. The directors of any corporation formed or existing under the laws of this State may, for the purposes of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof in the manner and form and to the extent provided herein.

[A subscriber to shares of stock who expects the same and pays assessment is estopped to deny contract of subscription. Pub. Co. v. Jack, 5 Mont. 568; s. c., 6 Pac. Rep. 20.]

Subscription to shares in capital stock of a corporation to be organized becomes a valid contract on acceptance of said shares. Id.

Failure to comply with law in levying assessments on shares of stock is matter of defense to be set up in the answer, no necessity for alleging compliance with law in complaint, as such compliance would be presumed. Id.]

§ 491. No one assessment must exceed five per cent. of the amount of the capital stock named in the articles of incorporation, except that if the whole capital of a corpora-

tion has not been paid up and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or, if a less amount is sufficient, then it may be for such a percentage as will raise that amount.

§ 492. No assessment must be levied while any portion of a previous one remains unpaid, unless —

1. The power of the corporation has been exercised in accordance with the provisions of this article for the purpose of collecting such previous assessment.

2. The collection of the previous assessment has been enjoined; or,

3. The assessment falls within the provisions of section 491.

§ 493. Every order levying an assessment must specify the amount thereof, when, to whom, and where payable, fix a day subsequent to the full term of publication of the assessment notice, on which the unpaid assessment shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment, and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

§ 494. Upon the making of the order, the secretary shall cause to be published a notice thereof, in the following form:

(Name of corporation in full. Location of principal place of business.) Notice is hereby given, that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which the assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of secretary, with location of office.)

§ 495. The notice must be personally served upon each stockholder, or, in lieu of personal service, must be sent within ten days after the assessment through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week, for four successive weeks, in some newspaper of general circulation and devoted to the publication of general news, published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a State or territory of the United States, publication in a



paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published in an adjoining county.

§ 496. If any portion of the assessment mentioned in the notice remains unpaid on the days specified therein for declaring the stock delinquent, the secretary, unless otherwise ordered by the board of directors, shall cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form:

(Name in full. Location of principal place of business.) Notice.— There is delinquent upon the following described stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of respective shareholders as follows: (Names, number of certificate, number of shares, amounts), and in accordance with law (and an order of the board of directors, made on the (date), if any such order shall have been made), so many shares of each parcel of stock as may be necessary, will be sold at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of sale.

(Name of secretary, with location of office.)

§ 497. The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

§ 498. The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

§ 499. By the publication of the notice the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessment due and costs of sale.

§ 500. On the day, at the place, and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the board of directors, sell or cause to be sold at public auction, to the highest bid-

der for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising in addition to the assessment.

§ 501. The person offering at such sale to pay the assessment and costs for the small number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock-books of the corporation on payment of the assessment and costs.

§ 502. If, at the sale of stock, no bidder offers the amount of the assessments and costs and charges due, the same may be bid in and purchased by the corporation through the president, secretary, or any director thereof, at the amount of the assessments, costs and charges due; and the amount of the assessments, costs and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

§ 503. All purchases of its own stock made by any corporation vests the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

§ 504. The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days, by order of the directors, entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

§ 505. No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the non-performance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void, and publication must begin anew.

Assessment of stock; powers — Civ. Code, §§ 506-511, 520.

§ 506. No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale was made.

§ 507. The publication of notice required by this article must be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is prima facie evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price, and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation, and copies of the same, certified by the secretary thereof, are prima facie evidence of the facts therein stated. Certificates signed by the secretary, and under the seal of the corporation, are prima facie evidence of the contents thereof.

§ 508. On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this chapter for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

[This section does not create, and was not intended to create, any personal liability for assessments, unless from terms of subscription such liability was incurred. In re South. Mt. M. Co., 7 Saw. 30; s. c., 8 Id. 366.]

§ 509. The provisions of this article only apply to such corporations whose articles of incorporation set forth the fact that the stock of such corporation is assessable.

§ 510. Any corporation whose capital stock is not assessable may, with the consent of three-fourths of its stockholders, in writing, spread upon the records of such corporation, make its stock assessable under the provisions of this article. The board of directors of any corporation, where such corporation desires to avail itself of the provisions of this article, shall file and have recorded in the office of the secretary of State, and of the county clerk of the county where the original articles of incorporation were filed, a certificate, duly acknowledged

as provided in cases of articles of incorporation, stating that the stock of such corporation has been made assessable, and thereafter the stock of such corporation shall be liable to assessments, as provided in this article.

§ 511. Any corporation heretofore formed under the laws of this State, may, by and with the consent of the stockholders holding two-thirds of the stock of the company, in writing, spread upon the records of such corporation, render its stock assessable, under the provisions of this chapter. The board of trustees of any corporation heretofore formed under the laws of this State, where such corporation desires to avail itself of the provisions of this chapter, shall file and have recorded in the office of the secretary of State and of the county clerk and recorded, where the original articles of incorporation were filed, a certificate, duly acknowledged as provided in cases of articles of incorporation, stating that the stock has been rendered assessable, and thereafter the stock of such corporation shall be liable to assessments, as provided in this chapter.

(Act approved March 7, 1893.)

### CHAPTER III.

#### Corporate Powers.

- Art. I. General powers.
- II. Records.
- III. Examination of corporations.

#### ARTICLE I. GENERAL POWERS.

- Sec. 520. Powers of corporations.
- 521. Limitation of powers.
- 522. Issuing bills prohibited.
- 523. Corporations to organize within one year.
- 524. Consolidation not to make foreign corporation.
- 525. Decrease or increase of stock or extension business.
- 526. May acquire real property, how much.
- 527. Consolidation of mining corporations.

§ 520. Every corporation, as such has power:

1. Of succession, by its corporate name, for the period limited in its articles of incorporation.

Limit of corporate existence. § 412, supra.

2. To sue and be sued, in any court.

See Const., art. XV, § 18. Manner of commencing suit against corporation. Code Civ. Pro., §§ 636, 637. Pleadings. Id., § 731. Appointment of receiver. Id., §§ 950, 952. Attachment. Id., §§ 894-897, 1563. Execution against stock. Id., § 1218. Quo warranto. Id., §§ 1410-1435; Costs. Id., §§ 1871, 1872.

[Held, that an action involving construction of act of congress, where plaintiff was a corporation, chartered by congress, had been properly brought on the United States side of the district court. R. R. Co. v. Carland, 5 Mont. 146; s. c., 3 Pac. Rep. 134.]



Declaration of agent of corporation respecting his authority is hearsay testimony. *Brown v. Mining Co.*, 1 Mont. 57.

Equity will interpose to prevent destruction of a franchise or continued injury to same, as a franchise is property. *R. R. Co. v. Carland*, 5 Mont. 201; s. c., 3 Pac. Rep. 134.

Action by corporation to enjoin collection of tax, sufficiency of complaint. *Ranching Co. v. Savage*, 15 Mont. 189; s. c., 38 Pac. Rep. 940; see, also, *Woolman v. Garringer*, 2 Mont. 405; *Collier v. Ervin*, id. 556.

Sufficiency of complaint in action for usurpation of franchises must be determined by rules of common law. *Territory v. Road Co.*, 2 Mont. 96. Complaint in nature of quo warranto held sufficient at common law and under Civil Practice Code. Id.

Held, that an act incorporating a road company gave the right of complaint for bad condition of road and prescribed certain penalties, but did not modify common law and statutory remedies against such company, for usurping a franchise. Id. And held that defendant subjected its franchise to forfeiture upon failure to keep its road in good condition. Id.

Stockholders held entitled to sue to set aside a fraudulent purchase made by a corporation without first demanding of the directors that suit be brought. *Gerry v. Bismarck Bank of N. D.*, 47 Pac. Rep. 810.

A town site company held not liable for plans of buildings made at instance of the president without evidence of his authority. *Mathias v. White Sulphur Springs*, 48 Pac. Rep. 624.

Articles of incorporation held admissible on question of agent's authority to buy up a claim against another company. *Mahoney v. Butte Hardware Co.*, 48 Pac. Rep. 545.

A president of a corporation who sold property to the company through fraud could not demand that he be put in statu quo before relief was granted the company. *Gerry v. Bismarck Bank of N. D.*, 47 Pac. Rep. 810.

A complaint to set aside a purchase by a corporation from its president, held not to present two theories of fraud. Id.

Where a corporation sued on a note, after a denial of its execution, in a separate offense denied that its general manager, who signed it, had authority to do so, the separate defense was merely evidential matter, and was not admitted for want of a denial. *Helena Nat. Bank v. Rocky Mt. Tel. Co.*, 51 Pac. Rep. 829.]

3. To make and use a common seal, and alter the same at pleasure.

4. To purchase, hold, and convey such real and personal estate as the purposes of the corporation may require.

See § 526, post.

[Party claiming title to a mine through a commercial corporation is estopped to question right of such corporation to take and hold title to mining property. *Hardware Co. v. Cobban*, 13 Mont. 351; s. c., 34 Pac. Rep. 24; *Bank v. Roberts*, 9 Mont. 323; s. c., 23 Pac. Rep. 718.

A president of a corporation who sold property to the company through fraud could not demand that he be put in statu quo before relief was granted the company. *Gerry v. Bismarck Bank of N. D.*, 47 Pac. Rep. 810.

A purchase by a corporation from its president held fraudulent. Id.]

5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation.

[Declaration of agent of corporation respecting his authority is hearsay testimony. *Brown v. Mining Co.*, 1 Mont. 57.

Officer of corporation may recover compensation for services rendered which were clearly outside his duties as secretary. *Felton v. Mining Co.*, 16 Mont. 81; s. c., 40 Pac. Rep. 70; *Severson v. Mining Co.*, 44 Pac. Rep. 79.

Articles of incorporation held admissible on question of agent's authority to buy up a claim against another company. *Mahoney v. Butte Hardware Co.*, 48 Pac. Rep. 545.

Where an agent of a corporation has implied authority to borrow money, the lender is not bound to show an actual appropriation of the money to the company's use, in order to charge it. *Helena Nat. Bank v. Rocky Mt. Tel. Co.*, 51 Pac. Rep. 829.

The managing agent of a nontrading corporation has no implied authority to bind the corporation by a negotiable instrument. Id.

Evidence held sufficient to show implied authority in a managing agent of a corporation to execute a negotiable instrument in its behalf. Id.

Evidence held insufficient to show a ratification by a corporation of a note executed by its manager without authority. Id.]

6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

See §§ 430 et seq.

7. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

[It is not necessarily ultra vires for one corporation to take stock in another. *Evans v. Bailey*, 4 West. Coast Rep. 427.

Purchase by hardware corporation of account against mining company held not ultra vires. *Mahoney v. Butte Hardware Co.*, 48 Pac. Rep. 545.]

§ 521. In addition to the powers enumerated in the preceding section, and to those elsewhere expressly given, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers so enumerated and given.

§ 522. No corporation shall create or issue bills, notes, or other evidence of debt, upon loans or otherwise, for circulation as money.

§ 523. If a corporation does not organize and commence the transaction of its business or the construction of its works within one year from the date of its incorporation, its corporate powers cease. The due incorporation of any company, claiming in good faith to be a corporation under this part, and doing business as such, or its right to exercise corporate powers, shall not be inquired into, collaterally, in any private suit to which such de facto corporation may be a party; but such inquiry may be had at the suit of the State on information of the attorney-general.

§ 524. If any railroad, telegraph, telephone, express, or other corporation or company organized under any of the laws of this State, shall consolidate by sale or otherwise with any railroad, telegraph, telephone, express or other corporation organized un-



der any of the laws of any other State or territory, or of the United States, the same shall not thereby become a foreign corporation, but the courts of this State shall retain jurisdiction over that part of the corporate property within the limits of the State in all matters that may arise as if said consolidation had not taken place.

Foreign corporations. §§ 1030-1038, post.

§ 525. No corporation shall issue stock or bonds except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. Every corporation may increase or diminish its capital stock, or create or increase its bonded indebtedness, or extend or change its business, subject to the foregoing provisions of this section, at a meeting called by the directors for the purpose, as follows:

1. Notice of the time and the place of the meeting, stating its object and the amount to which it is proposed to increase or diminish the capital stock and the extension or change proposed in its business, must be personally served on each stockholder resident in the State, at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published in a newspaper published in the county of such principal place of business once a week for six weeks successively.

2. The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation, or the estimated cost of the works which it may be the purpose of the corporation to construct.

3. At least two-thirds of the entire capital stock must be represented by the vote in favor of the increase, diminution, extension or change, before it can be effectual.

4. A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the amount to which the capital stock shall be so increased or diminished, or the extension or change of business provided for, the amount of stock represented at the meeting, and the vote by which the object was accomplished.

5. The certificate must be filed in the office of the county clerk where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of State, and thereupon the capital shall be so increased or diminished, or the business so extended or changed, or the bonded indebtedness may be increased accordingly.

§ 526. No corporation shall acquire or hold any more real property than may be reasonably necessary for the transaction of its business, or the construction of its works, except as otherwise specially provided. A

corporation may acquire real property as provided in the Code of Civil Procedure, title VII, part 3.

[A purchase by a corporation from its president held fraudulent. *Gerry v. Bismarck Bank of N. D.*, 47 Pac. Rep. 810.]

§ 527. It is lawful for two or more corporations formed under the laws of Montana territory, or of this State, or that may hereafter be formed, under the laws of this State, for mining purposes, which own or possess mining claims or lands adjoining each other, or lying in the same vicinity, to consolidate their capital stock, debts, property, assets and franchises, in such manner and upon such terms as may be agreed upon by the respective boards of directors of such corporations so desiring to consolidate their interests; but no such consolidation must take place without the consent of the stockholders representing two-thirds of the capital stock of each corporation, and no such consolidation relieves such corporations, or the stockholders thereof, from any and all just liabilities; and in case of such consolidation, due notice of the same must be given, by advertising, for one month, in at least one newspaper in the county and State where the said mining property is situated, if there be one published therein, and also in one newspaper published in the county where the principal place of business of any of said corporations shall be. And when the said consolidation is completed, a certificate thereof, containing the manner and terms of said consolidation, must be filed in the office of the county clerk of the county in which the original articles of incorporation of any of said corporations are filed, and a copy thereof filed in the office of the secretary of State; such certificate must be signed by a majority of each board of directors of the original corporations, and it is their duty to call, within thirty days after the filing of such certificate, and after at least ten days' public notice, a meeting of the stockholders of all of said corporations so consolidated, to elect a board of directors for the consolidated corporation, for the year thence ensuing. The said certificate must also contain all the requirements prescribed by section 403 of this Code. This section applies to all corporations formed under the laws of this State, or territory of Montana whether formed under this Code or prior thereto.

## ARTICLE II. RECORDS.

Sec. 540. Records of what, and how kept.

541. Other records to be kept by corporations for profit, and others.

§ 540. All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders,

Records; examinations; extension and dissolution — Civ. Code, §§ 541, 550, 560-563.

with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and who absent; and, if requested by any director, member, or stockholder, the time must be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition, and a record thereof made. On a similar request, the protest of any director, member or stockholder, to any action or proposed action must be entered in full; and such records must be open to the inspection of any director, member, stockholder, or creditor of the corporation.

See Pen. Code, §§ 989, 993.

§ 541. In addition to the records required to be kept by the preceding section, corporations for profit must keep a book, to be known as the "Stock and Transfer Book," in which must be kept a record of all stock; the names of the stockholders, or members, alphabetically arranged; installments paid or unpaid; assessments levied, and paid and unpaid, a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom; and all such other records as the by-laws prescribe. \* \* \* Such stock and transfer-book must be kept open to the inspection of any stockholder, member or creditor.

#### ARTICLE III. EXAMINATION OF CORPORATIONS, ETC.

Sec. 550. Chapter and article may be repealed.

§ 550. The legislative assembly may at any time amend or repeal this part, or any title, chapter, article, or section thereof, and dissolve all corporations created thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation take away or impair any remedy given against any such corporation, its stockholders, or officers, for any liability which has been previously incurred.

See Const., art. III, § 11; art. XV, § 3; Civ. Code, § 394.

#### CHAPTER IV.

##### Extension and Dissolution of Corporations.

Sec. 560. Proceedings to disincorporate.

561. On dissolution, directors to be trustees for creditors.

562. Any corporation may extend its corporate existence, how.

563. Title I to apply to all corporations with certain exceptions.

§ 560. A corporation is dissolved:

1. By the expiration of the time limited by its charter; or,

2. By a judgment of dissolution, in the

manner provided by the Code of Civil Procedure, title VI, part 3, and chapter 5, of title X, part 2.

3. By an act of the legislative assembly.

[Corporations are not dissolved by mere abandonment or non-user of their franchise. *Gans v. Switzer*, 9 Mont. 408; s. c., 24 Pac. Rep. 18.]

§ 561. Unless other persons are appointed by the court, the directors of such corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation, and as such trustees are authorized to execute all grants of real estate owned by such corporation.

§ 562. Every corporation formed for a period less than twenty years may at any time prior to the expiration of the term of its corporate existence extend such term to a period not exceeding twenty years from its formation. And every corporation may extend the period of its existence for an additional term not exceeding twenty years, after the expiration of the period for which it was formed, as follows: Such extension may be made at any meeting of the stockholders or members called by the directors expressly for considering the subject, if voted by stockholders representing two-thirds of the capital stock, or by two-thirds of the members, or may be made upon the written assent of that number of stockholders or members. A certificate of the proceedings of the meeting upon such vote, or upon such assent, shall be signed by the chairman and secretary of the meeting and the majority of the directors, and be filed in the office of the county clerk where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of State, and thereupon the term of the corporation shall be extended for the specified period.

§ 563. The provisions of this title are applicable to every corporation, unless such corporation is excepted from its operation, or unless a special provision is made in relation thereto inconsistent with some provision in this title, in which case the special provision prevails.

#### TITLE XI. FOREIGN CORPORATIONS.

Sec. 1030. File copy of charter and appoint agent.

1031. Consent of agent, etc.

1032. Failure to comply.

1033. Report to be filed.

1034. Existing corporations must comply.

1035. Insurance companies.

1036. Shall designate agent.

1037. Penalty; failure to comply.

1038. Existing corporations must comply.

§ 1030. All foreign corporations or joint-stock companies, organized under the laws of any State, or of the United States, or of any foreign government, shall, before doing



business within this State, file in the office of the secretary of State, and in the office of the county clerk of the county wherein they intend to carry on business, a duly authenticated copy of their charter, or articles of incorporation, and also a statement, verified by the oath of the president and secretary of such corporation, and attested by a majority of its board of directors, showing:

1. The name of such corporation and the location of its principal office or place of business without this State; and if it is to have any place of business or principal office within this State, the location thereof.

2. The amount of capital stock.

3. The amount of its capital stock actually paid in, in money.

4. The amount of its capital stock paid in, in any other way, and in what.

5. The amount of the assets of the corporation and of what the assets consist, with the actual cash value thereof.

6. The liabilities of such corporation, and if any of its indebtedness is secured, how secured, and upon what property.

Such corporation or joint-stock company shall also file, at the same time, and in the same offices, a certificate, under the seal of the corporation, and the signature of its president, vice-president, or other acting head, and its secretary, if there be one, certifying that the said corporation has consented to be sued in the courts of this State, upon all causes of action arising against it in this State, and that service of process may be made upon some person, a citizen of this State, whose name and place of residence shall be designated in such certificate, and such service when so made upon such agent shall be valid service on the corporation or company, and such agent shall reside at the principal place of business of such corporation or company.

See Const., art. XV, § 11. Consolidation does not make foreign corporation. § 524, *supra*.

[The law requiring foreign corporations doing business in Montana to file their charters does not fix as a penalty for failure, disqualification from doing business; it merely relieves the party from necessity of proving incorporation in any other manner than by reputation. *King v. National M. & E. Co.*, 4 Mont. 1; s. c., 1 Pac. Rep. 727; *Garfield M. & M. Co. v. Hammer*, 6 Mont. 53; s. c., 8 Pac. Rep. 153. Such failure does not deprive foreign corporation of the right to sue in courts of this territory, where cause of action is not based upon any act or contract of the corporation in the conduct of its business. *Cattle Co. v. Comrs.*, 9 Mont. 145; s. c., 22 Pac. Rep. 383.

A foreign corporation doing business openly, although it has failed to comply with above statute, is not a foreign resident to the extent of not being able to plead statute of limitations, and is liable to personal judgment. *King v. Co.*, *supra*; *Co. v. Hammer*, *supra*.

Non-compliance with above section will be of no avail to plaintiff seeking to enjoin an act of such corporation where complaint fails to state a cause of action. *Herschfield v. Tel. Co.*, 12 Mont. 102; s. c., 29 Pac. Rep. 883.]

§ 1031. The written consent of the person so designated to act as such agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of the consent, executed in like manner. A certified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof and conclusive evidence of the authority of the officer executing it.

§ 1032. If any foreign corporation shall attempt or commence to do business in this State without having first filed said statements, certificates and consents, required by this chapter, it shall forfeit to the people of this State the sum of twenty-five dollars for every day it shall so neglect to file the same, and every contract made by such corporation, or any agent or agents thereof, during the time it shall so neglect to file such statements, certificates or consents, shall be void at the election of the other party thereto. It shall be the duty of the county attorney of any county in which the business of such corporation shall be carried on, to sue for and recover, in the name of the State, the penalty above provided, and the same, when so recovered, shall be paid into the treasury of such county for the use of the common schools therein.

§ 1033. Every such corporation shall semi-annually, and within twenty days from the first days of January and July of each year, make a report, which shall be in the same form and contain the same information as required in the statement mentioned in section 1030 of this title, which report shall be filed in the office of the county clerk of the county wherein the business of said corporation is carried on, and a duplicate thereof in the office of the secretary of state.

§ 1034. Any foreign corporation that has heretofore engaged in business, performed acts or made contracts in this State, may, within ninety days from the date this act goes into effect, comply with the provisions hereof, and thereupon all its acts and contracts done and made before this act goes into effect shall be valid and enforceable, any statute of this State heretofore enacted to the contrary notwithstanding.

(Approved March 19, 1895.)

§ 1035. Foreign life insurance companies, not on the assessment plan, are hereby declared to be embraced within the provisions of this act.

(Approved March 18, 1895.)

§ 1036. Before any foreign corporation shall begin to carry on business in this State, it shall, by its certificate, under the hand of its president and seal of such company, filed in the office of the secretary of State, designate an agent, who shall be a citizen of this State, upon whom service of summons, and other process may be made. Such certificate shall also state the principal place



of business of such corporation in the State. Service upon such agent shall be sufficient to give jurisdiction over such corporation to any of the courts of this State.

(Approved March 8, 1893.)

§ 1037. If any such foreign corporation shall fail to comply with the provisions of the foregoing section, all its contracts with citizens of this State shall be void as to the corporation, and no court of this State shall enforce the same in favor of the corporation.

(Approved March 8, 1893.)

§ 1038. Any foreign corporation that has heretofore engaged in business or made contracts in this State, may, within ninety days from the passage of this act, file such certificate with the secretary of State; and thereupon all their acts and contracts done and made before this act goes into effect are hereby declared as if said certificate had been filed before they began business in the State.

(Approved March 8, 1893.)

### III. CODE OF CIVIL PROCEDURE.

Pt. II. Civil actions.

III. Special proceedings of a civil nature.

#### Part II. Civil Actions.

Tit. V. Manner of commencing suit.

VI. Pleadings in civil actions.

VII. Provisional remedies in civil actions.

IX. Execution of judgment.

X. Actions in particular cases.

XI. Proceedings in justices' courts.

XIV. Miscellaneous provisions.

#### TITLE V. MANNER OF COMMENCING CIVIL ACTIONS.

Sec. 636. Summons, how served.

637. Publication when defendant is absent from the State, concealed, or a foreign corporation having no agent, etc.

§ 636. The summons must be served by delivering a copy thereof, as follows:

1. If the suit is against a corporation formed under the laws of this State, to the president or other head of the corporation, secretary, cashier, or managing agent thereof.

2. If the suit is against a foreign corporation, or a non-resident joint-stock company or association, doing business and having a managing or business agent, cashier or secretary within this State, to such agent, cashier or secretary, or to a person designated as provided in section 1031 of the Civil Code.

[In absence of any showing in record as to manner of service of summons upon a foreign corporation, it would be presumed that due service had been made upon an authorized agent. *King v. Min. Co.*, 4 Mont. 7; s. c., 1 Pac. Rep. 727.]

3. Any corporation doing business in this State may be served with summons, by delivering a copy of the same to the president, secretary, treasurer or other officer of the

corporation, or to the agent designated by such corporation as the person upon whom service shall be made as required by law, and if none of the persons above mentioned can be found in the county, then service may be made upon any clerk, superintendent, general agent, cashier, principal director, ticket agent, station keeper, managing agent or other agent, having the management, direction, or control of any property of such corporation. If none of the persons in this section described can be found in the county in which such action is commenced, then service may be made, as provided in this section, upon any of the persons herein described, in any county of this State.

§ 637. \* \* \* When the defendant is a foreign corporation, having no managing or business agent, cashier, secretary or other officer within the State, and an affidavit stating any of these facts is filed with the clerk of the court in which the action is brought, and such affidavit also states that a cause of action exists against the defendant in respect to whom the service of the summons is to be made, and that he or it is a necessary or proper party to the action, the clerk of the court in which the action is commenced shall cause the service of the summons to be made by publication thereof.

#### TITLE VI. PLEADINGS IN CIVIL ACTIONS.

##### CHAPTER VII.

##### Verification of Pleadings.

Sec. 731. Verification by corporation.

§ 731. \* \* \* When a corporation is a party, the verification (of a pleading) may be made by any officer thereof, and must state what officer he is, and that the matters stated therein are true to the best knowledge, information and belief of such officer. If there is no officer of the corporation within the county, the verification may be made by its attorney.

[Failure to verify complaint, not ground for dissolution of attachment. *Cope v. M. & P. Co.*, 1 Mont. 53. Must be taken advantage of by motion to strike out. *Collier v. Ervin*, 3 Mont. 142.]

#### TITLE VII. PROVISIONAL REMEDIES.

Ch. 4. Attachment.

6. Receivers.

##### CHAPTER IV.

##### Attachment.

Sec. 894. Shares of stock and debts due a defendant, how attached and disposed of.

895. How real and personal property shall be attached.

896. Certificate of defendant's interest to be furnished.

897. Persons refusing certificates to be examined.

§ 894. The rights or shares which the defendant may have in the stock of any cor-

poration or company, together with the interest and profits thereon, and all debts due such defendant, and all other property in this State of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

Attachment in justices' court. § 1563, post.

[M., under an agreement with an alien, who advanced the money, purchased property to be conveyed to a corporation to be organized. With notice of the trust before the corporation was organized, a creditor of M. attached, and, after the corporation had been organized and received conveyance, bought in the property under execution sale in his suit. It was held that the attachment and purchase were void. *Princeton Min. Co. v. Bank*, 7 Mont. 530; s. c., 19 Pac. Rep. 210.]

§ 895. The sheriff to whom the writ is directed and delivered must execute the same without delay, and if the undertaking mentioned in section 893 be not given, as follows:

2. Real property, or an interest therein, belonging to the defendant, and held by any other person, or standing on the records of the county in the name of any other person, must be attached by filing with the county clerk a copy of the writ, together with a description of the property, and a notice that such real property and any interest of the defendant therein, held by or standing in the name of such other person (naming him), are attached, and by leaving with the occupant, if any, and with such other person or his agent, if known and within the county, or at the residence of either, if within the county, a copy of the writ, with the similar description and notice. If there is no occupant of the property, a copy of the writ, together with such description and notice, must be posted in a conspicuous place upon the property. The county clerk must index such attachment when filed, in the names both of the defendant and of the person by whom the property is held, or in whose name it stands on the record.

4. Stocks or shares, or interest in stocks or shares, of any corporation or company must be attached by leaving with the president or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the defendant is attached, in pursuance of such writ.

§ 896. Upon the application of a sheriff, holding a writ of attachment, the president or other head of an association or corporation, or the secretary, cashier, or managing agent thereof, or a debtor of the defendant, or a person holding property, including a bond, promissory note, or other instrument for the payment of money, belonging to the defendant, must furnish to the sheriff a certificate, under his hand, specifying his right to a number of shares of the defendant, in

the stock of the association or corporation, with all dividends declared, or incumbrances thereon; or the amount, nature and description of the property, held for the benefit of the defendant, or of the defendant's interest in property so held, or of the debt or demand owing to the defendant, as the case requires.

§ 897. If a person to whom application is made, as prescribed in the last section, refuses to give such a certificate; or if it is made to appear, by affidavit, to the satisfaction of the court, or a judge thereof, that there is reason to suspect that a certificate given by him is untrue, or that it failed fully to set forth the facts, required to be shown thereby, the court or judge may make an order, directing him to attend, at a specified time, and at a place within the county to which the writ is issued, and submit to an examination under oath, concerning the same. The order may, in the discretion of the court or judge, direct an appearance before a referee named therein.

## CHAPTER VI.

### Receivers.

Sec. 950. Appointment of receiver.

952. Dissolution of corporations.

§ 950. A receiver may be appointed by the court in which an action is pending, or by the judge thereof:

5. In cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

6. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

[Status of creditor to whom assignment was made by an insolvent corporation. *Teitig v. Boesman*, 12 Mont. 404; s. c., 31 Pac. Rep. 371. Order appointing receiver is not appealable. *Wilson v. Davis*, 1 Mont. 98; *Stebbins v. Savage*, 5 id. 253; s. c., 5 Pac. Rep. 278.

An insolvent corporation may make a general assignment without preferences. *Ames & Frost Co. v. Heslet*, 47 Pac. Rep. 805.]

§ 952. Upon the dissolution of any corporation, the district court of the county in which the corporation carries on its business, or has its principal place of business, on application of any creditor of the corporation, or of any stockholder or member thereof, may appoint one or more persons to be receivers or trustees of the corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, and to pay the outstanding debts thereof, and to divide the moneys and other property that shall remain over, among the stockholders or members.

**TITLE IX. EXECUTION OF THE JUDGMENT IN CIVIL ACTIONS.****CHAPTER I.****The Execution.**

Sec. 1218. Shares of stock may be attached on execution.

§ 1218. \* \* \* Shares and interest in any corporation or company, \* \* \* may be attached on execution, in like manner as upon writs of attachment. \* \* \*

**TITLE X. ACTIONS IN PARTICULAR CASES.****CHAPTER V.****Quo Warranto.**

- Sec. 1410. When proceedings may be instituted.  
 1411. When against a corporation.  
 1412. Who may commence the action.  
 1413. Upon whose relation.  
 1415. What complaint to contain.  
 1416. Who made defendants.  
 1417. Where action brought.  
 1418. Application to file complaint, etc.  
 1419. Summons.  
 1420. Service by publication.  
 1421. Pleadings.  
 1422. Judgment.  
 1423. Judgment against director of corporation.  
 1424. When court may order new election.  
 1425. Rights of persons adjudged to be entitled to office.  
 1426. Action for damages.  
 1427. Judgment, how enforced.  
 1428. When corporation has forfeited its rights.  
 1429. Appointment of trustees, etc.  
 1430. Powers and duties of trustees.  
 1431. How trustees placed in possession.  
 1432. Attachment for costs.  
 1433. Actions have precedence.  
 1434. Actions in supreme court.  
 1435. Effect of appeal.

§ 1410. A civil action may be brought in the name of the State:

1. Against a person who usurps, intrudes into, or unlawfully holds or exercises, a public office, civil or military, or a franchise, within this State, or an office in a corporation created by the authority of this State.  
 \* \* \* \* \*

3. Against an association of persons who act as a corporation within this State without being legally incorporated.

§ 1411. A like action may be brought against a corporation:

1. When it has offended against a provision of an act for its creation, or renewal, or any act altering or amending such acts.

2. When it has forfeited its privileges and franchises by non-user.

3. When it has committed or omitted an act which amounts to a surrender of its corporate rights, privileges, and franchises.

4. When it has misused a franchise or privilege conferred upon it by law, or exer-

cised a franchise or privilege not so conferred.

[Quo warranto discussed. Territory v. Road Co., 2 Mont. 96.]

§ 1412. The attorney-general, when directed by the governor, shall commence any such action; and when upon complaint or otherwise, he has good reason to believe that any case specified in the preceding section can be established by proof, he shall commence an action.

§ 1413. Such officer may, upon his own relation, bring any such action, or he may, on leave of the court, or a judge thereof in vacation, bring the action upon the relation of another person; and if the action be brought under the first subdivision of section 1410, he may require security for costs, to be given as in other cases.

§ 1415. When the action is against a person for usurping an office, the complaint shall set forth the name of the person who claims to be entitled thereto, with an averment of his right thereto, and judgment may be rendered upon the right of the defendant, and also upon the right of the person so averred to be entitled, or only upon the right of the defendant, as justice requires.

§ 1416. All persons who claim to be entitled to the same office or franchise may be made defendants in the same action to try their respective rights to such office or franchise.

§ 1417. An action under this chapter can be brought in the supreme court of the State, or in the district court of the county in which the defendant, or one of the defendants, resides or is found, or, when the defendant is a corporation, in the county in which it is situate, or has a place of business.

§ 1418. Upon application for leave to file a complaint, the court or judge may direct notice thereof to be given to the defendant previous to granting such leave and may hear the defendant in opposition thereto, and if leave be granted, an entry thereof shall be made on the minutes of the court, or the fact shall be indorsed by the judge on the complaint, which shall then be filed.

§ 1419. When the complaint is filed without leave and notice, a summons shall issue, and be served as in other cases.

§ 1420. When a summons is returned not served because the defendant, or its officers or office, cannot be found within the county, the clerk shall publish the summons as in other cases.

§ 1421. The pleadings shall be as in other cases.

§ 1422. When a defendant is found guilty of usurping, intruding into, or unlawfully holding or exercising, an office, franchise, or privilege, judgment shall be rendered that such defendant be ousted and altogether excluded therefrom, and that the relator recover his costs.



## Quo warranto — Code Civ. Pro., §§ 1423-1434.

§ 1423. When the action is against a director of a corporation, and the court finds that, at his election, either illegal votes were received, or legal votes were rejected, or both, sufficient to change the result, judgment may be rendered that the defendant be ousted, and of induction in favor of the person who was entitled to be declared elected at such election.

§ 1424. In a case named in the last section the court may order a new election to be held, at a time and place, and by judges, appointed by the court, notice of which election, and naming the judges, shall be given for the time and in the manner provided by law for notice of elections of directors of such corporation; the order of the court shall become obligatory upon the corporation and its officers when a duly certified copy thereof is served upon its secretary personally, or left at its principal office; and the court may enforce its order by attachment, or in any other manner it deems necessary.

§ 1425. If judgment be rendered in favor of the person averred to be entitled to an office, he may, after taking the oath of office, and executing any official bond required by law, take upon him the execution of the office; and he shall immediately thereafter demand of the defendant all the books and papers in his custody or within his power appertaining to the office from which he has been ousted.

§ 1426. Such person may, at any time within one year after the date of such judgment, bring an action against the party ousted, and recover the damages he sustained by reason of such usurpation.

§ 1427. If such defendant refuse or neglect to deliver over any such book or paper pursuant to such demand, he shall be deemed guilty of a contempt of court, and shall be fined in any sum not exceeding ten thousand dollars, and imprisoned in the jail of the county until he complies with the order of the court, or is otherwise discharged by due course of law.

§ 1428. When, in any such action, it is found and adjudged that a corporation has, by an act done or omitted, surrendered or forfeited its corporate rights, privileges, or franchises, or has not used the same during a term of five years, judgment shall be entered that it be ousted and excluded therefrom, and that it be dissolved; and when it is found and adjudged that a corporation has offended in any matter or manner which does not work such surrender or forfeiture, or has misused a franchise, or exercised a power not conferred by law, judgment shall be entered that it be ousted from the continuance of such offense, or the exercise of such power.

§ 1429. The court rendering a judgment dissolving a corporation shall appoint trustees of the creditors and stockholders of the corporation, who, after giving an undertak-

ing, payable to the State, in such sum and with such sureties as the court may designate and approve, conditioned that they will faithfully discharge their trust, and properly pay and apply all money that may come into their hands, shall have power to settle the affairs of the corporation, collect and pay outstanding debts, and divide among the stockholders the money and other property which remain after the payment of debts and necessary expenses.

§ 1430. The trustees shall forthwith demand all money, property, books, deeds, notes, bills, obligations and papers of every description, within the custody, power or control of the officers of the corporation, or either of them belonging to the corporation, or in anywise necessary for the settlement of its affairs, or for the discharge of its debts and liabilities, and they may sue for and recover the demands and property of the corporation, and shall be jointly and severally liable to the creditors and stockholders to the extent of its property and effects which come into their hands.

§ 1431. An officer of such corporation who refuses or neglects to deliver over any such money, or other things, pursuant to such demand, shall be deemed guilty of a contempt of court, and shall be fined not exceeding ten thousand dollars, and imprisoned in the jail of the proper county until he complies with the order of the court, or is otherwise discharged by due course of law; and he shall be liable to the trustees for the value of all money, or other things, so refused or neglected to be surrendered, together with all damages that have been sustained by the stockholders and creditors of the corporation, or any of them, in consequence of such neglect or refusal.

§ 1432. If judgment be rendered against a corporation, or against a person claiming to be a corporation, the court may render judgment for costs against the directors or other officers of the corporation, or against the person claiming to be a corporation.

§ 1433. Actions under this chapter in any court shall have precedence of any civil business pending therein; and the court, if the matter is of public concern shall, on the motion of the attorney-general, or the attorney of the party, require as speedy a trial of the merits of the case as may be consistent with the rights of the parties.

§ 1434. Actions under this chapter, commenced in the supreme court, shall be conducted in the same manner as if commenced in the district court, and the clerk of the supreme court shall have the same authority to issue summonses and other process and to enter orders and judgments as the clerk of the district court has in like cases. All pleadings and the conduct of the trial shall be the same as in the district court. If a jury is required to determine an issue of fact, a jury shall be drawn and selected from the jury boxes of the county in which

the seat of government is located, and the clerk of the district court of said county must place such jury boxes in the custody of the clerk of the supreme court for that purpose.

§ 1435. If the action is commenced in the district court, an appeal may be taken from the judgment by either party to the supreme court as in other cases, but if there is judgment of ouster against the defendant, there shall be no stay of execution or proceedings pending such appeal.

## **TITLE XI. PROCEEDINGS IN JUSTICES' COURTS.**

### **CHAPTER IV.**

#### **Provisional Remedies.**

#### **ARTICLE II. ATTACHMENT.**

Sec. 1563. Certain provisions apply to all attachments in justices' courts.

§ 1563. The sections of this Code from sections 894 to 924 both inclusive, are applicable to attachments issued in justices' courts, the word "constable" being substituted for the word "justice," whenever the writ is directed to a constable, and the word "justice" substituted for "judge."

## **TITLE XIV. MISCELLANEOUS PROVISIONS.**

### **CHAPTER VI.**

#### **Costs.**

Sec. 1871. Non-resident plaintiff.

1872. If security not given, action dismissed.

§ 1871. When the plaintiff in an action resides out of the State, or is a foreign corporation, security for the costs and charges, which may be awarded against such plaintiff, may be required by the defendant. When required, all proceedings in the action must be stayed until an undertaking, executed by two or more persons, is filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or an additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking is executed and filed.

§ 1872. After the lapse of thirty days from the service of notice that security is required, or for an order for new or additional security, upon proof thereof, and that no undertaking as required has been filed, the court or judge may order the action to be dismissed.

## **Part III. Special Proceedings of a Civil Nature.**

### **TITLE VI. VOLUNTARY DISSOLUTION OF CORPORATIONS.**

Sec. 2190. Corporations, how dissolved.

2191. Application, what to contain.

2192. Application, how signed and verified.

2193. Filing application and publication of notice.

2194. Objections may be filed.

2195. Hearing of application.

2196. Judgment-roll and appeals.

§ 2190. A corporation may be dissolved by the district court of the county where its principal place of business is situated, upon its voluntary application for that purpose.

See Civ. Code, §§ 560-563.

§ 2191. The application must be in writing, and set forth:

1. That at a meeting of the stockholders or members called for that purpose, the dissolution of the corporation was resolved upon by a two-thirds vote of all the stockholders or members.

2. That all claims and demands against the corporation have been satisfied and discharged.

§ 2192. The application must be signed by a majority of the board of trustees, directors or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action.

§ 2193. If the court is satisfied that the application is in conformity with this title, the judge thereof must order it to be filed with the clerk, and that the clerk give not less than thirty nor more than fifty days' notice of the application, by publication in some newspaper published in the county; and if there are none such, then by advertisements posted up in three of the principal public places in the county.

§ 2194. At any time before the expiration of the time of publication, any person may file his objections to the application.

§ 2195. After the time of publication has expired, the court or judge may, upon five days' notice to the persons who have filed the objections, or without further notice, if no objections have been filed, proceed to hear and determine the application, and if all the statements made therein are shown to be true, must declare the corporation dissolved.

§ 2196. The application, notices, proof of publication, objections (if there be any), and declaration of dissolution, constitute the judgment-roll; and from the judgment an appeal may be taken, as from other judgments of the district court.

Pay envelopes; trusts and combines — Pen. Code, §§ 109, 321, 325, 923.

#### IV. PENAL CODE.

- Pt. I. Crimes and punishments.  
II. Criminal procedure.

##### Part I. Crimes and Punishments.

- Tlt. IV. Crimes against the elective franchise.  
VII. Crimes against public justice.  
XIII. Crimes against property.

#### TITLE IV. CRIMES AGAINST THE ELECTIVE FRANCHISE.

Sec. 109. Unlawful acts of employers; illegal use of pay envelopes.

§ 109. It shall be unlawful for any employer, in paying his employes the salary or wages due them, to inclose their pay in "pay envelopes" upon which there is written or printed the name of any candidate or political mottoes, devices or arguments containing threats or promises, express or implied, calculated or intended to influence the political opinions or actions of such employes. Nor shall it be lawful for an employer, within ninety days of an election, to put up or otherwise exhibit in his factory, workshop, or other establishment or place where his workmen or employes may be working, any handbill or placard containing any threat or promise, notice or information, that in case any particular ticket or political party, or organization, or candidate, shall be elected, work in his place or establishment will cease, in whole or in part, or shall be continued or increased, or his place or establishment be closed up, or the salaries or wages of his workmen or employes be reduced or increased, or other threats, or promises, express or implied, intended or calculated to influence the political opinions or actions of his workmen or employes. This section shall apply to corporations as well as individuals, and any person violating the provisions of this section is guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five nor more than five hundred dollars, and imprisonment not exceeding six months in the county jail, and any corporation violating this section shall be punished by fine not to exceed five thousand dollars, or forfeit its charter, or both such fine and forfeiture.

(Act approved February 25, 1895.)

#### TITLE VII. CRIMES AGAINST PUBLIC JUSTICE.

##### CHAPTER VIII.

##### Conspiracy.

Sec. 321. Formation of trusts; punishment.

325. Combinations not included in foregoing.

§ 321. Every person, corporation, stock company or association of persons in this State who, directly or indirectly, combine or form what is known as a trust, or make any contract with any person or persons, corporations or stock companies, foreign or

domestic, through their stockholders, directors, officers, or in any manner whatever, for the purpose of fixing the price or regulating the production of any article of commerce, or of the product of the soil for consumption by the people, or to create or carry out any restriction in trade, to limit productions, or increase or reduce the price of merchandise or commodities, or to prevent competition in merchandise, or commodities, or to fix a standard or figure whereby the price of any article of merchandise, commerce or produce, intended for sale, use or consumption, will be in any way controlled, or to create a monopoly in the manufacture, sale or transportation of any such article, or to enter into an obligation by which they shall bind others or themselves not to manufacture, sell, or transport any such article below a common standard or figure, or by which they agree to keep such article or transportation at a fixed or graduated figure, or by which they settle the price of such article, so as to preclude unrestricted competition, is punishable by imprisonment in the State prison not exceeding five years, or by fine not exceeding ten thousand dollars, or both. Every corporation violating the provisions of this section, forfeits to the State all its property and franchises, and in case of a foreign corporation it is prohibited from carrying on business in the State.

§ 325. The provisions of this chapter do not apply to any arrangement, agreement or combination between laborers made with the object of lessening the number of hours of labor or increasing wages, nor to persons engaged in horticulture or agriculture, with a view of enhancing the price of their products.

#### TITLE XIII. CRIMES AGAINST PROPERTY.

Ch. 6. Extortion.

11. Fraudulent insolvencies by corporations, and other frauds in their management.

##### CHAPTER VI.

##### Extortion.

Sec. 923. Requiring release from liability of servants or employes.

§ 923. Every person, company or corporation, which requires of its servants or employes, as a condition of their employment or otherwise, any contract or agreement whereby such person, company or corporation is released or discharged from liability or responsibility on account of personal injuries received by such servants or employes, while in the service of such person, company or corporation, by reason of the negligence of such person, company or corporation, or the agents or employes thereof, is punishable by imprisonment in the State prison not exceeding five years, or by a fine not exceeding five thousand dollars, or both.



**CHAPTER XI.****Fraudulent Insolvencies by Corporations, and Other Frauds in their Management.**

Sec. 980. Frauds in subscription for stock of corporations.

- 981. Fraudulent issue of stock, scrip, etc.
- 982. Frauds in procuring organization, etc., of corporation.
- 983. Unauthorized use of names in prospectus, etc.
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- 985. Savings bank officer overdrawing his account.
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- 987. Frauds in keeping accounts in books of corporation.
- 988. Officer of corporation, publishing false reports.
- 989. Officer of corporation to permit an inspection.
- 990. Officer of railroad company contracting debts in its behalf exceeding its available means.
- 991. Debt contracted in violation of the last section not invalid.
- 992. Director of a corporation presumed to have knowledge of its affairs.
- 993. Director present at meeting, when presumed to have assented to proceedings.
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- 995. Foreign corporations.
- 996. Same.
- 997. Agent of foreign corporation.
- 998. Corporation not complying with laws.
- 999. Agent of corporation.
- 1000. "Director" defined.

§ 980. Every person who signs the name of a fictitious person to any subscription for, or any agreement to take, stock in any corporation, existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

§ 981. Every officer, agent or other person in the service of any joint-stock company or corporation formed or existing under the laws of this State, or of the United States, or of any State or territory thereof, or of any foreign government or country, who wilfully and knowingly, with intent to defraud, either —

1. Sells, pledges or issues, or causes to be sold, pledged or issued, signs or executes, or causes to be signed or executed, with intent to sell, pledge or issue, or cause to be sold, pledged or issued, any certificate or instrument purporting to be a certificate or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt, or writing purporting to be a bond or evidence of debt of such company or corporation, without being first thereto duly authorized by such company or corporation or contrary to the

charter or laws under which said company or corporation exists, or in excess of the power of such company or corporation, or of the limit imposed by law or otherwise, upon its power to create or issue stock or evidence of debt; or,

2. Reissues, sells, pledges or disposes of, or causes to be reissued, sold, pledged or disposed of, any surrendered or canceled certificates, or other evidence of the transfer, or ownership of any such share or shares, is punishable by imprisonment in the State prison not exceeding seven years, or by a fine not exceeding three thousand dollars, or both.

See Civ. Code, §§ 367, 445, 525.

§ 982. Every officer, agent or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged or altered book, paper, voucher, security or other instrument of evidence, to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in the State prison not less than three nor more than ten years.

§ 983. Every person who, without being authorized so to do, subscribes the name of another to, or inserts the name of another in any prospectus, circular or other advertisement or announcement of any corporation or joint-stock association, existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association, is guilty of a misdemeanor.

§ 984. Every director of any stock corporation who concurs in any vote or act of the directors of such corporation or of any of them, by which it is intended, either —

1. To make any dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

Personal liability. Civ. Code, § 428.

2. To divide, withdraw or in any manner, except as provided by law, pay to the stockholders, or any of them, any part of the capital stock of the corporation; or,

3. To discount or receive any evidence of debt in payment of any installment actually called in and required to be paid, or with the intent to provide the means of making such payments; or,

4. To receive or discount any note or other evidence of debt, with the intent to enable any stockholder to withdraw any part of the money paid in by him, or his stock; or,

5. To receive from any other stock corpo-

## Frauds by corporations and officers — Pen. Code, §§ 985-999.

ration, in exchange for the shares, notes, bonds or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds, or other evidences of debt issued by such other corporation, is guilty of a misdemeanor.

§ 985. Every officer, teller, or clerk of any savings bank, who knowingly overdraws his account with such bank, and thereby wrongfully obtains the money, note or funds of such bank, is guilty of a misdemeanor.

§ 986. Every officer, agent, teller or clerk of any bank, and every individual banker or agent, teller or clerk of any individual banker, who receives any deposits, knowing that such bank or association or banker is insolvent, is guilty of a felony.

§ 987. Every officer, director or agent of any corporation or joint-stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or to direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent or member of any corporation or joint-stock association who, with intent to defraud, destroys, alters, mutilates or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes, or concurs in making any false entries, or omits, or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the State prison not less than three nor more than ten years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both imprisonment and fine.

§ 988. Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing or posting any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or refuses to make any book or post any notice required by law, in the manner required by law, other than such as are mentioned in this chapter, is guilty of a felony.

See Civ. Code, § 445; Pen. Code, § 981.

§ 989. Every officer or agent of any corporation, having or keeping an office within this State, who has in his custody or control any book, paper or document of such corporation, and who refuses to give to a stockholder or member of such corporation, lawfully demanding, during office hours, to inspect or take a copy of the same, or of any part thereof, a reasonable opportunity so to do, is guilty of a misdemeanor.

§ 990. Every officer, agent, or stockholder of any railroad company, who knowingly as-

sents to, or has any agency in contracting any debt by or on behalf of such company, unauthorized by a special law for the purpose, the amount of which debt, with other debts of the company, exceeds its available means for the payment of its debts, in its possession, under its control, and belonging to it at the time such debt is contracted, including its bona fide and available stock subscriptions, and inclusive of its real estate, is guilty of a misdemeanor.

§ 991. The last section does not affect the validity of a debt created in violation of its provisions, as against the company.

§ 992. Every director of a corporation or joint-stock association is deemed to possess such knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this chapter.

§ 993. Every director of a corporation or joint-stock association who is present at a meeting of the directors at which any act, proceeding, or omission of such directors in violation of this chapter occurs, is deemed to have concurred therein unless he at the time causes or in writing requires his dissent therefrom to be entered in the minutes of the directors.

§ 994. Every director of a corporation or joint-stock association, although not present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this chapter occurs, is deemed to have concurred therein if the facts constituting such violation appear on the records or proceedings of the board of directors and he remains a director of the same company for six months thereafter and does not within that time cause or in writing require his dissent from such illegality to be entered in the minutes of the directors.

§ 995. It is no defense to a prosecution for a violation of the provisions of this chapter that the corporation was one created by the laws of another State, government or country, if it was one carrying on business or keeping an office therefor within this State.

§ 996. Every foreign corporation doing business in this State contrary to the provisions of title XII, part IV, division 1, of the Civil Code, is guilty of a misdemeanor.

§ 997. Every person who acts as agent or in any other capacity for a foreign corporation, who has not complied with the provisions of law relating to foreign corporations, is guilty of a misdemeanor.

§ 998. Every corporation which fails to comply with the provisions of law relating to corporations, as prescribed in the Civil Code, is guilty of a misdemeanor.

§ 999. Every person who acts as an officer, agent or in any other capacity for a corporation which has not complied with the provisions of law as prescribed in the Civil Code, is guilty of a misdemeanor.

[Declaration of agent of corporation respecting his authority is hearsay testimony. *Brown v Mining Co.*, 1 Mont. 57.]



§ 1000. The term "director," as used in this chapter, embraces any of the persons having by law the direction or management of the affairs of a corporation, by whatever name such persons are described in its charter or known by law.

## Part II. Criminal Procedure.

Tit. VI. Pleadings and proceedings after information or indictment and before the commencement of the trial.

VII. Proceedings after the commencement of the trial and before judgment.

X. Miscellaneous proceedings.

## TITLE VI. PLEADINGS AND PROCEEDINGS AFTER INFORMATION OR INDICTMENT AND BEFORE THE COMMENCEMENT OF THE TRIAL.

### CHAPTER IV.

#### Plea.

Sec. 1942. Plea of guilty by a corporation.

§ 1942. A plea of guilty can be put in by the defendant himself only in open court, unless upon indictment or information against a corporation or for a misdemeanor, in which case it may be put in by counsel.

## TITLE VII. PROCEEDINGS AFTER THE COMMENCEMENT OF THE TRIAL AND BEFORE JUDGMENT.

### CHAPTER II.

#### The Trial.

Sec. 2086. Proof of corporation by reputation.

§ 2086. If upon a trial or proceeding in a criminal case, the existence, constitution, or powers of any corporation shall become material, or be in any way drawn in question, it is not necessary to produce a certified copy of the articles or act of incorporation, but the same may be proved by general reputation, or by the printed statutes of the State, or government or country by which such corporation was created.

## TITLE X. MISCELLANEOUS PROCEEDINGS.

### CHAPTER IX.

#### Proceeding against Corporations.

Sec. 2570. Summons upon information against corporation.

2571. Forms of summons.

2572. When and how served.

2573. Examination of the charge.

2574. Certificate of magistrate and return.

2575. County attorney to file information if there be sufficient cause.

2576. Appearance and plea.

2577. Fine on conviction, how collected.

2578. Summons to corporation.

2579. Service of summons.

§ 2570. Upon a complaint against a corporation, the magistrate must issue a sum-

mons signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge, the time to be not less than ten days after the issuing of the summons.

§ 2571. The summons must be substantially in the following form:

"County of (as the case may be).

"The State of Montana to the (naming the corporation).

"You are hereby summoned to appear before me at (naming the place), on (specifying the day and hour), to answer a charge made against you upon the complaint of A. B. for (designating the offense generally).

"Dated at the city (or township) of . . . , this . . . day of . . . , eighteen . . . . .

"G. H., Justice of the Peace (or as the case may be)."

§ 2572. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president or other head of the corporation, or to the secretary, cashier, or managing agent thereof.

§ 2573. At the appointed time of the summons, the magistrate must proceed to investigate the charge in the same manner as in the case of a natural person, so far as these proceedings are applicable.

§ 2574. After hearing the proofs, the magistrate must certify upon the complaint, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the complaint and certificate, as prescribed in section 1693.

§ 2575. If the magistrate returns a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the county attorney may file an information thereof, as in case of a natural person held to answer, or he may file such information by leave of the court.

§ 2576. If an indictment is found, or information is filed, the corporation may appear by counsel to answer the same. If it does not thus appear, a plea of not guilty must be entered, and the same proceedings had thereon as in other cases.

§ 2577. When a fine is imposed upon a corporation on conviction, it may be collected by virtue of the order imposing it, by the sheriff of the county, out of its real and personal property, in the same manner as upon an execution in a civil action.

§ 2578. When an indictment is found or an information filed against a corporation, the clerk must issue a summons in its corporate name, commanding it to appear and answer the indictment or information, a copy of which summons must be served on an officer of said corporation, or upon its agent or attorney designated as the person upon whom service of summons in civil actions may be made, if there be any such in the county where the indictment is found or information is filed; and if there be no officer



## Stock certificates — Act, March 8, 1897.

or designated agent or attorney in the county where the indictment or information is found or filed, then upon any managing agent, ticket agent, clerk, cashier, or secretary, freight agent, superintendent, or general business manager in the county; and if there be none of the above-described persons in the county, then upon any such persons in any county in the State. Such notice must be served at least five days before the time at which the said corporation is by summons required to appear.

§ 2579. When the sheriff or other officer returns the summons, certifying the service

thereof, the corporation must on and after the day appointed in such summons for its appearance, be considered in default, and the court must order the clerk to enter appearance for the corporation, and enter the plea of not guilty in the records of the court, and further proceedings may be had thereon as if the corporation had appeared and pleaded not guilty thereto; and if the corporation is convicted, the court must enter judgment for the amount of the fine and costs which may be awarded against it, in the same manner as on judgment in civil action.

## LEGISLATIVE ACT RELATING TO CORPORATIONS ENACTED IN 1897.

AN ACT to authorize the issuance of certificates of stock to bearer by corporations organized in whole or in part for mining purposes with capital stock non-assessable and full paid, to define the rights of the holders and bearers of such certificates and to authorize such corporations to do such acts as may be necessary or proper to carry into effect the rights and powers granted them by this act.

Be it enacted by the legislative assembly of the State of Montana:

Section 1. Any corporation now existing or hereafter created or organized under or by virtue of the laws of the State of Montana and having a capital stock non-assessable and fully paid within the meaning of the laws of this State, and whose object or purpose, in whole or in part, is to carry on the business of mining within this State, shall have the power to and may, by a vote of its stockholders, holding at least three-fourths of its capital stock, authorize or provide for the transfer and issue of certificates of stock which shall entitle the holder or bearer to the ownership of the same upon delivery and without transfer by endorsement or on the books of such corporation, subject, however, to the by-laws of the corporation and the provisions of this act, but no such transfer or issue shall be made except upon surrender and cancellation of the certificate or certificates so to be transferred; and all bearer certificates so issued shall be delivered to and receipted for on the books of the company, by the stockholder or his authorized agent at whose request such transfers shall be made; and thereafter, so far as the corporation is concerned, the bearer of any such bearer certificate shall for all purposes except that of holding office, be deemed a stockholder of the company, owning and holding the number of shares of its capital stock represented by such bearer certificate, and the stock or shares of stock thereby represented shall be listed to bearer on the list of stockholders and other books of the company.

§ 2. Any corporation which shall have issued bearer certificates may establish agencies in other States and in foreign countries whereat holders or bearers of bearer certificates may, under such regulations as the corporation shall prescribe, register and deposit their bearer certificates of stock for voting purposes. Such corporation shall have the right to appoint and prescribe the duties of, fix the compensation and remove at pleasure its agent or agents at such agencies, and also to establish rules and regulations for registering and depositing bearer certificates of stock, and may at any time close up or terminate any such agency. Whenever at any meeting of the stockholders of such corporation for election or other purposes any such agent shall certify to the corporation in such manner as it may prescribe, that there is registered and deposited with him, to be held by him until after the meeting for which such registration and deposit shall be made, a bearer certificate or certificates describing each by its face number, number of shares represented and date of issue, and stating when and by whom deposited, the person who shall have made such deposit, may, in writing attested by such agent, appoint some suitable person to represent him at such meeting as his proxy and there vote the shares of stock represented by his said bearer certificate or certificates so deposited; and thereupon the person to whom such proxy shall have been given may vote the shares of stock represented by such bearer certificate or certificates in all matters and things upon which votes are cast or had at such meeting.

§ 3. It shall not be necessary for the corporation or its officers or trustees or directors to give any personal notice or notice by mail to holders or bearers of such bearer certificates of any meeting of stockholders for the purpose of electing trustees or directors, or for any other purpose, or for any action taken or proposed to be taken by such corporation or its stockholders or its trustees or its directors at any meeting, but such notice may, in every case, be given to such

## Stock certificates— Act, March 8, 1897.

holders or bearers of bearer certificates by publication in a newspaper as now provided by law and shall be valid and binding. Every holder of a bearer certificate shall be held to have waived any notice of any stockholders' meeting for any purpose, or of any action or proposed action of the corporation or its stockholders or trustees or directors except notice by publication in some newspaper when it is required by law.

§ 4. Except as herein provided stock or shares of stock represented by a bearer certificate can only be voted or represented by actual production of such bearer certificate at the time of voting or representation and by the bearer thereof. In all cases the actual production of a bearer certificate shall, so far as the corporation is concerned be conclusive evidence of the bearer's right to vote or represent the shares it represents.

§ 5. Dividends to holders of bearer certificates shall only be paid to the bearers thereof upon production of such certificates, except where such certificates of stock have attached to them dividend coupons payable

to bearer, in which case dividends may be paid to the bearer of the proper dividend coupon upon its presentation and surrender without the production of the certificate to which such dividend coupons belonged.

§ 6. Bearer certificates may at any time be converted into registered certificates such as are now provided for by law, upon the request of the bearer of such bearer certificates and the surrender of such bearer certificates to the corporation and the cancellation thereof; and registered certificates may also be converted and exchanged for bearer certificates at the request of the owners of such registered certificates and the surrender and cancellation thereof.

§ 7. The corporation may do all acts and adopt all by-laws and resolutions necessary or proper to carry into effect the powers herein granted and to provide for details in the exercise thereof, subject, however, to the provisions of this act.

§ 8. This act shall take effect from and after its passage.

(Approved March 8, 1897.)

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# NEBRASKA.

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## SPECIAL ACTS RELATING TO CORPORATIONS, ENACTED SUBSEQUENTLY TO 1890.





# NEBRASKA.

## CONSTITUTION OF NEBRASKA—1875.

### PROVISIONS RELATING TO CORPORATIONS.

#### ARTICLE I.

##### Bill of Rights.

- Sec. 16. Prohibited legislation.  
21. Private property not to be taken without just compensation.

#### ARTICLE III.

##### Legislative.

- Sec. 15. Local or special laws not to be passed in certain cases.

#### ARTICLE IX.

##### Revenue and Finance.

- Sec. 1. Corporations to be taxed on their property and franchises.  
4. Legislature cannot release a corporation from taxation.

#### ARTICLE XII.

##### Municipal Corporations.

- Sec. 1. County, town or municipality not to become stockholders to stock of corporations.

#### ARTICLE XIII.

##### Miscellaneous Corporations.

- Sec. 1. Corporations not to be created by special law.  
2. Railroads not to be constructed within municipalities without consent of electors thereof.  
3. Corporations may sue and be sued.  
4. Individual liability of stockholders.  
5. Election of directors of corporations.  
6. Charters under which organization has not taken place have no validity.  
7. Individual liability of stockholders in banking corporations.

#### ARTICLE XIV.

##### State Indebtedness.

- Sec. 3. Credit of State not to be loaned in aid of corporations.

#### ARTICLE I.

##### Bill of Rights.

§ 16. No \* \* \* law impairing the obligation of contracts, or making any irrevocable grant of special privileges or immunities, shall be passed.

Forfeiture of franchises. See §§ 355, 5238-5260.

[Laws interfering with vested rights not valid. *B. & S. Assn. v. Graham*, 7 Neb. 180.]

§ 21. The property of no person shall be taken or damaged for public use without just compensation therefor.

Railroads not to be constructed without consent of electors. Const., art. XIII, § 2.

[A company formed by consolidation from pre-existing ones, may exercise right of eminent domain. *Trester v. Ry. Co.*, 33 Neb. 177; s. c., 49 N. W. Rep. 1110.

The words "or damage" were intended to give a right of recovery which did not previously exist, and was not intended to limit or restrict any remedy previously existing. *R. R. Co. v. Standen*, 22 Neb. 343; s. c., 35 N. W. Rep. 183.

In awarding just compensation for property damaged for public use, general benefits shared by public at large cannot be considered, while special benefits to property damaged may be. *Schaller v. Omaha*, 23 Neb. 325; s. c., 36 N. W. Rep. 533.

This section must be given a reasonable and practical construction. The amount or extent of damage is a question of fact for the jury. *R. R. Co. v. Hazels*, 26 Neb. 371; s. c., 42 N. W. Rep. 93.]

#### ARTICLE III.

##### Legislative.

§ 15. The legislature shall not pass local or special laws in any of the following cases, that is to say: \* \* \* Granting to any corporation, association or individual, the right to lay down railroad tracks, or amending existing charters for such purpose. Granting to any corporation, association, or individual, any special or exclusive privileges, immunity or franchise whatever \* \* \*.

Corporations not to be created by special law. Const., art. XIII, § 1; see Statutes, §§ 336 et seq.

Revenue and finance; corporations — Const., Art. ix, §§ 1, 4; Art. xii, § 1; Art. xiii, §§ 1-4.

## ARTICLE IX.

### Revenue and Finance.

Section 1. The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property and franchises, the value to be ascertained in such manner as the legislature shall direct, and it shall have power to tax \* \* \* insurance, telegraph and express interests or business, \* \* \* in such manner as it shall direct by general law, uniform as to the class upon which it operates.

See §§ 3897-4042.

[An act providing for assessment of stock of corporations held not to be in conflict with this section. *Mortensen v. Mfg. Co.*, 12 Neb. 198; s. c., 10 N. W. Rep. 714.]

§ 4. The legislature shall have no power to release or discharge any \* \* \* corporation, \* \* \* from \* \* \* its proportionate share of taxes to be levied for State purposes, or due any municipal corporation, nor shall commutation for such taxes be authorized in any form whatever.

See §§ 3897-4042.

## ARTICLE XII.

### Municipal Corporations.

Section 1. No city, county, town, precinct, municipality, or other subdivision of the State, shall ever become a subscriber to the capital stock, or owner of such stock, or any portion or interest therein, of any railroad or private corporation, or association.

Credit of State not to be loaned to corporations. Const., art. XIV, § 3.

## ARTICLE XIII.

### Miscellaneous Corporations.

Section 1. No corporation shall be created by special law, nor its charter extended, changed, or amended, except those for charitable, educational, penal, or reformatory purposes, which are to be and remain under the patronage and control of the State, but the legislature shall provide by general laws for the organization of all corporations hereafter created. All general laws passed pursuant to this section may be altered from time to time, or repealed.

See Const., art. III, § 15. Statutes. §§ 336 et seq.

[Private and public corporations distinguished. *Bridge Co. v. Means*, 33 Neb. 859; s. c., 51 N. W. Rep. 240.]

§ 2. No such general law shall be passed by the legislature granting the right to construct and operate a street railroad within any city, town, or incorporated village, without first requiring the consent of a majority of the electors thereof.

Private property inviolate. Const., art. I, § 21.

[In order to give required consent, the affirmative of the proposition must receive majority of all votes cast at the election. *State v. Bechel*, 22 Neb. 158; s. c., 34 N. W. Rep. 342.]

§ 3. All corporations may sue and be sued in like cases as natural persons.

See § 337 (second), and notes.

§ 4. In all cases of claims against corporations and joint-stock associations, the exact amount justly due shall be first ascertained, and after the corporate property shall have been exhausted, the original subscribers thereof shall be individually liable to the extent of their unpaid subscription, and the liability for the unpaid subscription shall follow the stock.

See §§ 341, 349, 352-355. Liability of stockholders in banking corporations. Const., art. XIII, § 7.

[Section construed. *Smith v. Steele*, 8 Neb. 118. Stockholders held liable for their unpaid stock, and for a sum equal to shares held by each of them for all liabilities. *Porter v. Banking Co.*, 35 Neb. 272; s. c., 54 N. W. Rep. 424.

Requirements that exact amount justly due shall be first ascertained, and that corporate property shall have been exhausted are sufficiently complied with by rendition of judgment and return of execution nulla bona against the corporation. *Id.*

Under a subscription contracting with builders for the construction of a factory for operation by a company to be incorporated by the subscribers, whose liabilities are several, it must hold that the corporation was not liable on the contract, and that the builders could not enforce a mechanic's lien for the amount of the unpaid subscription. *Davis v. Ravenna Creamery Co.*, 48 Neb. 471; s. c., 67 N. W. Rep. 436.

Notes purporting to be executed by a corporation held to be the obligations of the corporation, and not of its members. *Bank v. Ferguson*, 63 N. W. Rep. 370.

A charter provision that private property of a stockholder shall not be liable for corporate debts is void so far as it attempts to exempt unpaid stock subscriptions. *Van Pelt v. Gardner*, 74 N. W. Rep. 1083.

An action to enforce stockholder's individual liability should be for the benefit of all corporate creditors. *Bank v. Bank*, 74 N. W. Rep. 1086.

A petition to enforce such liability held to sufficiently state that the amount of the creditor's claim had been first ascertained, and corporate assets exhausted, as required by above section. *Id.*

General nature of relief to be afforded in action to enforce such liability, outlined. *Id.*

The word "ascertained" in above section means judicially ascertained. *Id.*

Where the constitution limits the liability of stockholders, the legislature cannot extend it. *Van Pelt v. Gardner*, 74 N. W. Rep. 1083.

The amount due a corporate creditor has been "ascertained" when his claim is reduced to judg-

## Corporations — Const., Art. xiii, §§ 5-7; Art. xiv, § 3.

ment and his claim is reduced to judgment and execution is returned unsatisfied. *Id.*

The corporation is not a necessary party to a suit by a corporate creditor to subject subscriptions to payment of his debt. *Id.* But all debtor subscribers and all corporate creditors should be made parties. *Id.*

As between themselves, each stock subscriber is liable for his share of corporate debts, and if compelled to pay more than his share may sue his cosubscribers for contribution. *Id.*

A stock subscriber's liability for corporate debts, except of banking corporations, is limited to his unpaid subscriptions. *Id.*

The creditors' right to enforce stockholder's liability accrues when the exact amount due the corporate creditors has been ascertained and the property exhausted. *Id.*

Creditors held not entitled to recover the excess above the real value of property transferred to the corporation in payment of stock subscriptions, in the absence of fraud. *Troup v. Horbach*, 74 N. W. Rep. 326.]

§ 5. The legislature shall provide by law that in all elections for directors or managers of incorporated companies, every stockholder shall (have) the right to vote in person or proxy for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them upon the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner.

Directors may reduce capital stock. § 321. Failure to elect officers. § 324. Directors of dis-

solved corporation. § 326. Directors individually liable. § 5260.

§ 6. All existing charters or grants of special or exclusive privileges under which organization shall not have taken place, or which shall not be in operation within sixty days from the time this Constitution takes effect, shall thereafter have no validity or effect whatever.

Existing corporations may take advantage of general laws. § 319.

§ 7. Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors, over and above the amount of stock by him held, to an amount equal to his respective stock or shares so held, for all its liabilities accruing while he remains such stockholder; and all banking corporations shall publish quarterly statements, under oath, of their assets and liabilities.

See Const., art. XIII, § 4, and notes.

## ARTICLE XIV.

## State Institutions.

§ 3. The credit of the State shall never be given or loaned in aid of any individual, association or corporation.

Counties and municipalities not to become stockholders. Const., art. XII, § 1.



## PART II. THE CONSOLIDATED STATUTES OF NEBRASKA—1891.

### CHAPTER IX.

#### Corporations.

- Sec. 319. Companies now incorporated may accept provisions of this chapter; all companies to publish detailed statement of their condition.
320. Corporations not to employ stock or property except to accomplish object of their creation.
321. Directors may reduce capital stock and nominal value.
322. Companies for public improvement may be given further time for completion of work.
323. Same.
324. Failure to elect officers; meeting may be called; majority of stockholders may change time of annual meeting.
326. Dissolved corporation; directors of, shall be trustees for creditors and stockholders.
327. Same; pending actions against, not to abate.
328. Same; execution may be had upon judgments in favor of or against.
329. Same; title of all real estate of, passes to trustees.
330. Same; trustees of, subject to control of court of chancery.
331. Same; may prosecute any suit at law or in equity.
332. Same; may be sued by its corporate name.
333. Same; judgments on decrees in favor of or against, may be revived.
334. Same; writ of error upon judgments may be sued out again; process may be served upon.
335. Same; nothing in this chapter to be construed as extending or reviving charter of.
336. Any number of persons may be incorporated for any lawful business.
337. General powers.
338. Foregoing powers shall vest in every corporation in this State.
339. Articles of incorporation must be adopted and recorded.
340. Corporations for construction of public works shall file copy of articles.
341. Articles must fix highest amount of indebtedness or liability.
342. Must organize within one year after incorporation.
343. Notice to be published for four weeks.
344. Such notice shall contain what.
345. May commence business as soon as articles are filed.
346. Change in articles shall be recorded and published in same manner.
347. Consent of two-thirds of members necessary to dissolution.
348. By-laws to be posted in conspicuous place.
349. Amount of all existing debts to be published annually.
350. May convey lands by deed.
351. May sue for and recover arrears and debts from members.
352. Liability of stockholders upon failure of corporation to comply with foregoing provisions.

- Sec. 353. Deception practiced upon public in relation to means or liability.
354. Unwarranted payment of dividends included in last section.
355. Forfeiture of franchises.
356. Corporations whose charters have expired may continue to act for certain purposes.
357. Legal organization cannot be attacked collaterally.
358. Foreign corporation may become a body corporate in this State, how.

#### *Manufacturing Corporations.*

- Sec. 486. Manufacturing companies may be formed, how.
487. Annual and special meetings.
488. Commissioners to open books for subscription to stock.

#### General Provisions.

§ 319. All companies now incorporated in this State, and actually doing business, may accept any of the provisions of this chapter, and when so accepted, and a certified copy of their acceptance filed with the secretary of the State, that portion of their charters inconsistent with the provisions of this chapter is hereby repealed. All companies hereafter incorporated, or accepting the provisions of this chapter, except those named in the fortieth section of this chapter, are required to make and publish, in some newspaper of general circulation in the county where the principal office is located, an annual exhibit, showing a full, fair, and detailed statement of the condition of such company, which statement shall be verified by the oath of the president, secretary, and clerk.

See Const., art. XIII, § 6.

[A company formed by consolidation from pre-existing ones, may exercise right of eminent domain and other corporate privileges. *Trester v. Ry. Co.*, 33 Neb. 177; s. c., 49 N. W. Rep. 1110.]

§ 320. No company or association incorporated under the provisions of this chapter shall employ its stock, means, assets, or other property, directly or indirectly, for any other purpose whatever than to accomplish the legitimate object of its creation.

Powers of corporations. See §§ 337, 338, and notes. Trusts and combinations prohibited. §§ 4442-4449, 5850-5852.

## Increase of capital; completion of work; dissolution — Stats., §§ 321-326.

[Under laws of this State, a corporation organized for purpose of building a railroad, has no power to sell or dispose of its property or franchises until its road has been constructed. *Clarke v. R. R.*, 4 Neb. 453. Unlawful acts of a corporation are not limited to those which are mala prohibita and malum in se, but include powers which the corporation is not authorized to exercise, and contracts which it is not empowered to make. *State v. Distilling Co.*, 29 Neb. 700; s. c., 46 N. W. Rep. 153.

A banking corporation of Nebraska has no power to become a stockholder in an insurance company. *Bank v. Hart*, 37 Neb. 197; s. c., 55 N. W. Rep. 631.]

§ 321. The board of directors or trustees of any company heretofore incorporated, or which may hereafter be formed under any law of this State, may, with the written consent of the persons in whose name a majority of the shares of the capital stock thereof shall stand on the books of said company, reduce the amount of the said capital stock, and the nominal value of all the shares thereof, and issue certificates therefor; Provided, That the rights of creditors shall not be affected or in anywise impaired by the reduction of the capital stock of any such corporation.

[Issue of capital stock may be effected only by direction of the company. *Humboldt Assn. v. Stevens*, 34 Neb. 528; s. c., 52 N. W. Rep. 568.

Existing shareholders are entitled pro rata to a preference in purchase of newly-issued stock. *Humboldt Assn. v. Stevens*, 34 Neb. 534; s. c., 52 N. W. Rep. 568.]

§ 322. Whenever any joint-stock company hereafter incorporated for the purpose of erecting any public improvement in this State, whose charter may be limited as to the time of completion of said improvement, and when any such company has been legally organized, and has actually commenced and has in progress toward completion such public improvement, it shall be lawful for any such company to have further time allowed for the final completion of said work, as is hereinbefore provided.

§ 323. Upon petition, being filed by the directors of any corporation, in the district court of the county in which the principal office of such corporation is located, and upon giving thirty days' notice, by publication in a newspaper of general circulation in said county, of the object and prayer of such petition, said court shall, at any regular term after the publication of said notice, upon good cause shown, decree the extension of the time for the completion of said improvement, to such period as shall appear to such court just and reasonable.

§ 324. Whenever any company, association, or society heretofore or hereafter incorporated shall have failed to elect its officers at the time designated, it shall be lawful for any such company, association, or society to call a meeting and elect its officers, who shall hold their respective offices until the time specified for the annual or other fixed

time for holding such election; and when any incorporated company heretofore organized, or that may be hereafter organized under the provisions of this chapter, shall have a specified time fixed for its annual meeting, a majority of the stockholders in interest may, at any regular annual meeting, change the time of the annual meeting thereof.

Method of electing directors. Const., art. XIII, § 5.

§ 326. Upon the dissolution, by the expiration of the term of its charter or otherwise, of any corporation now existing, or hereafter created, and unless other persons be appointed by the legislature, or by some court of competent authority, the directors or managers of the affairs of such corporation, acting last before the time of its dissolution, by whatever name they may be known in law, and survivors of them, shall be the trustees of the creditors and stockholders of the corporation dissolved, and shall have full power to settle the affairs of the same, collect and pay the outstanding debts, and divide among the stockholders the moneys and property that shall remain, in proportion to the stock of each stockholder paid up, after the payment of debts and necessary expenses; and the persons so constituted trustees shall have authority to sue for and recover the debts and property of the dissolved corporation, by the name of the trustees of such corporation, describing it by its corporate name, and shall be jointly and severally responsible to the creditors and stockholders of such corporation, to the extent of its property and effects that shall come into their hands; and no suit against any such corporation shall abate in consequence of such dissolution, and said trustees may be made parties thereto by scire facias; and all liens of judgment and decrees of any courts of chancery, existing at the time of such dissolution, either in favor of or against such corporation, shall continue in force in the same manner as if such dissolution had not taken place; Provided, That in case of the death, resignation, inability, or refusal to act, of the directors or managers aforesaid, or the survivors thereof, the district court of the proper county may, on the application of any person interested, appoint trustees to fill the vacancy, with full power to perform the duties aforesaid.

Forfeiture of franchises. §§ 355, 4446. Proceedings to dissolve or annul franchise. §§ 5238-5260. Voluntary dissolution. § 347.

[Property and assets of a corporation, when it has ceased to do business, constitutes a trust fund for payment of debts, and rights of creditors are superior to those of stockholders, or the assignee of insolvent stockholders. *State v. Bank*, 28 Neb. 682; s. c., 44 N. W. Rep. 998.

Directors and managing officers of an insolvent private corporation cannot take advantage of their position to secure a preference for themselves,

but are required to share ratably with other creditors. *Ingwersen v. Edgecombe*, 52 Neb. 740; s. c., 60 N. W. Rep. 1032.

Directors of an insolvent corporation cannot secure debts due themselves or third persons for which they are obligated as sureties, in preference to other creditors. *Tillson v. Downing*, 63 N. W. Rep. 836.

An insolvent corporation, in the absence of fraud, may prefer one of its creditors. *Wallachs v. Robinson & Stokes Co.*, 70 N. W. Rep. 52.

Ownership of all the stock by one person does not work a dissolution. *Harrington v. Connor*, 70 N. W. Rep. 52.

The members of the board of directors of an insolvent corporation who take part in the meeting of the board at which an assessment was made on unpaid stock cannot question their liability on such assessments. *Macfarland v. West Side Imp. Assn.*, 73 N. W. Rep. 736.]

§ 327. No suit or action, either at law or in chancery, pending in any court, in favor of or against any banking or other corporation, shall be discontinued or abate by the dissolution of such corporation, whether such dissolution occur by the expiration of its charter or otherwise; but all such suits or actions may, in all courts of justice, be prosecuted by the creditors, assigns, receivers, or trustees having the legal charge of the assets of such dissolved corporation, to final judgment or decree, in the corporate name of such dissolved corporation.

§ 328. Upon all judgments and decrees in favor of or against any such corporation, whether such judgments or decrees exist at the time of the dissolution of such corporations or are obtained afterwards, in suits or actions pending at the time of such dissolution, execution may be had, and satisfaction or performance of the same be enforced by the creditors, assigns, receivers, or trustees having the legal charge of the assets of such dissolved corporation, in the corporate name of such dissolved corporation.

§ 329. The title of all real estate belonging to any such corporation shall, at the time of the dissolution of the same, pass to the trustees of such corporation, who shall have full power and authority to sell and dispose of any such real estate, in such manner and upon such terms as may be thought best for the interest of the creditors and stockholders, and upon any such sale to make a good and sufficient title therefor.

Conveyances by corporations. § 350.

[An insolvent corporation may transfer its property in good faith for proper purposes. *Shaw v. Robinson, etc., Co.*, 69 N. W. Rep. 947.]

§ 330. The trustees of any such dissolved corporation shall be subject to the control of the court of chancery, and be liable to be sued by petition in chancery, on behalf of any person interested, on account of any neglect or omission of duty or abuse of trust; and in case of the removal of any such trustee by such court for an abuse of trust, such

court shall have the power and authority to appoint a suitable person to fill the vacancy; and any such trustee may for reasonable cause, upon the application of any creditor or stockholder, be required by the district court to give bond and security in such amount and subject to such conditions as the court may direct.

§ 331. Any corporation created by this chapter may, at any time after its dissolution, whether such dissolution occur by the expiration of its charter or otherwise, prosecute any suit at law or in equity, in and by the corporate name of such dissolved corporation, for the use of the party entitled to receive the proceeds of any such suit, upon any and all causes of action accrued, or which, but for such dissolution, would have accrued in favor of such corporation, in the same manner and with like effect as if such corporation were not dissolved.

§ 332. Any such dissolved corporation may be sued at law or in equity, in and by its corporate name, for or upon any cause of action accrued, or which, but for such dissolution, would have accrued against such corporation in the same manner and with the like effect as if such corporation were not dissolved, and all process by which any suit, either at law or in equity, may be instituted against any such dissolved corporation, may be served by the sheriff or any other proper officer, by delivering to any one of the assignees, trustees, receivers, or persons having charge of the assets of such dissolved corporation a copy thereof, or by leaving such copy at the residence of any such assignee, trustee, receiver, or person having charge of such assets.

§ 333. Judgments and decrees in favor of or against any such dissolved corporation, whether such judgments and decrees were rendered before or after such dissolution, and which have heretofore or may at any time hereafter become dormant, may be revived in favor of or against such dissolved corporation, as the case may be, in and by the corporate name of such dissolved corporation, in the same manner and with like effect as if such corporation were not dissolved; and in all cases of judgment or decrees against such corporation the writ of *scire facias*, or other proper process, shall be served in the manner prescribed in the preceding section for the process in suits against dissolved corporations.

§ 334. Writs of error upon judgments at law may be sued out, and bills of review in chancery may be exhibited, in favor of or against any such dissolved corporation, and by its corporate name in the same manner and with the like effect as if such corporation were not dissolved, and process thereon against any such dissolved corporation shall be served in the manner prescribed in this subdivision.

§ 335. Nothing in this chapter contained shall at any time be construed as extending



## Corporate powers — Stats., §§ 336, 337.

or reviving the charter of any banking or other corporation dissolved either by affluxion of time or otherwise, for any other purpose than that of judicial proceedings, in favor of or against the same.

§ 336. Any number of persons may be associated and incorporated for the transaction of any lawful business, including the construction of canals, railways, bridges, and other works of internal improvement.

Corporations cannot be created by special laws. Const., art. III, § 15; art. XIII, § 1. Powers. §§ 320, 337, 338. Method of incorporation. §§ 339 et seq. Legality cannot be attacked collaterally. § 357.

[Filing articles is a condition precedent to corporate existence. *Abbott v. Smelting Co.*, 4 Neb. 421. A mere association of individuals is not a corporation. *Id.*

Corporations can be organized under laws of this State for a lawful purpose only. *State v. Distilling Co.*, 29 Neb. 700; s. c., 46 N. W. Rep. 155.

When persons organize themselves under a statute into a de jure corporation, the statute becomes a part of the charter, and the statute and the rights of creditor acquired thereunder are contractual. *Pub. Co. v. Bank*, 41 Neb. 175; s. c., 59 N. W. Rep. 683.

Failure, through mistake, to become a de jure corporation does not render stockholders liable on contracts with creditors of the corporation where it has for a considerable time in good faith exercised corporate function unchallenged by the State. *Id.*

General laws, together with the articles of incorporation of a company, constitute its charter. *Mfg. Co. v. Sheldon*, 44 Neb. 281; s. c., 26 N. W. Rep. 480.]

§ 337. Every corporation, as such, has power:

First. To have succession by its corporate name.

[A loan and trust company cannot appropriate the geographical name "Nebraska" as its trade name, and enjoin others from so using it, there being no conflict in interest or liability of deceiving the public. *L. T. Co. v. Nine*, 27 Neb. 514; s. c., 43 N. W. Rep. 348.

A contract of guarantee running to the corporation cannot be enforced by it after it has changed its name. *Crane v. Specht*, 39 Neb. 128; s. c., 57 N. W. Rep. 1015.]

Second. To sue and be sued, to complain and defend in courts of law and equity.

See Const., art. XIII, § 3. Action against dissolved corporation does not abate. § 327. Dissolved corporation may sue and be sued. §§ 331, 332. Judgments against, may be revived. §§ 334, 335. Corporation may sue its members for arrears. § 351. Legal organization cannot be attacked collaterally. § 357. Venue of actions against corporations. §§ 4591-4595. Service of summons upon. §§ 4611-4626, 5381-5383. Informations against. §§ 5238-5260. Attachment. §§ 4708, 4710.

[General denial to complaint by corporation does not put in issue corporate character. *Ins. Co. v. Robinson*, 8 Neb. 455; *Herron v. Cole*, 25 id. 707; s. c., 41 N. W. Rep. 765. A corporation not

liable on "due bill" given by officer, without proof of his authority. *Gregory v. Lamb*, 16 Neb. 207; s. c., 20 N. W. Rep. 248.

Corporation liable for tortious acts of servants; but act must be connected with the transaction of business for which company was incorporated. *Miller v. R. R. Co.*, 8 Neb. 223. Not liable for act of servant in causing arrest of another on charge of burglary. *Id.*

A corporation not bound by acts of members, when government is vested in directors. *Columbus Co. v. Hurford*, 1 Neb. 161; *Clarke v. R. R. Co.*, 5 id. 321. Contract will not be inferred from unauthorized acts of members. *Id.*

A corporation may be bound by acts of its agents, although not under corporate seal, and even when not reduced to writing, except in cases where a statute of frauds otherwise expressly provides. *Columbus Co. v. Hurford*, 1 Neb. 158.

Mere name "The People's Bank" does not of itself show legal capacity to sue, yet if a note is given to the bank by that name, the makers are estopped to deny its capacity to sue thereon. *Bair v. Bank*, 27 Neb. 580; s. c., 43 N. W. Rep. 347.

Officers of a corporation acting solely for themselves, and dealing with it as private individuals, do not bind it. *Keohler v. Dodge*, 31 Neb. 336; s. c., 47 N. W. Rep. 913; *Bank v. Sharpe*, 40 Neb. 123; s. c., 58 N. W. Rep. 734.

A corporation may sue and be sued by corporate name, at common law and under the Code. *Bank v. Capps*, 32 Neb. 244; s. c., 49 N. W. Rep. 223. And need not aver act of incorporation. *Trester v. Ry. Co.*, 33 Neb. 184; s. c., 49 N. W. Rep. 1110.

Judgment rendered against a corporation upon the confession of its general manager, who is without a warrant of attorney, is void. *Howell v. Mfg. Co.*, 32 Neb. 630; s. c., 49 N. W. Rep. 704.

In an action on a note payable to a bank, defendant cannot raise question of plaintiff's incorporation. *Bank v. Capps*, 32 Neb. 244; s. c., 49 N. W. Rep. 223.

Allegations in pleadings as to citizenship of a corporation do not estop same parties from making different claims as to such citizenship. *Trester v. Ry. Co.*, 33 Neb. 176; s. c., 49 N. W. Rep. 1110. Railway company held to be domestic corporation. *Id.*

Bank sued makers of note indorsed to it by secretary of payee, a corporation. Declarations of officers of such corporation, made after transfer to bank, are inadmissible to show want of authority in secretary to make transfer. *Bank v. Brill*, 37 Neb. 626; s. c., 56 N. W. Rep. 382. What is sufficient evidence to show such authority. *Id.*

Corporation liable for injury to servants from instruments which it might have known were unsafe. *Hammond v. Johnson*, 38 Neb. 249; s. c., 56 N. W. Rep. 967.

Affidavit in attachment, purporting to be by a corporation, but evidently by its agent, is not void and may be amended even after motion to quash them for defect. *Moline v. Curtis*, 38 Neb. 521; s. c., 57 N. W. Rep. 161.

One who relied upon willful and fraudulent representations of an officer of a corporation, and was thereby induced to buy its worthless stock, without means of knowing the statements were false, may maintain an action against the officer for damages. *Carruth v. Harris*, 41 Neb. 789; s. c., 60 N. W. Rep. 106.

Any stockholder of a corporation whose officers have abused their trust in the interest of another corporation, may maintain in his own name, in behalf of his corporation, an action for redress and for an accounting between the two corporations, in pleading both as defendants. *Fitzgerald v. Construction Co.*, 41 Neb. 374; s. c., 59 N. W. Rep. 838. And acquiescence of a stockholder will not bar a recovery in such suit brought by him. *Id.*

A corporation is liable civilly for all damages occasioned by the torts of its officers or agents committed within scope of their employment. *Id.*

Stockholders are not proper parties respondent in a proceeding to compel a corporation by mandamus to perform a corporate act. *State v. Ry. Co.*, 42 Neb. 830; s. c., 62 N. W. Rep. 225.

The testimony at another trial, by an officer of a corporation, with relation to previous corporate acts, cannot be proved as an admission binding upon the corporation. *Bank v. Rice*, 48 Neb. 428; s. c., 67 N. W. Rep. 165.

Evidence held to sustain finding that the corporation formed by the members of an insolvent corporation or partnership did not assume the liabilities of the old company. *Campbell v. Bank*, 68 N. W. Rep. 344.

A newly-organized corporation held not liable for the debts of an established corporation, whose business and property it had succeeded to. *Auston v. Bank*, 68 N. W. Rep. 623.

Notes purporting to be executed by a corporation held to be the obligations of the corporation, and not its members. *Bank v. Ferguson*, 68 N. W. Rep. 370.

A corporation may compromise a doubtful claim against it. *Ins. Co. v. Messe*, 69 N. W. Rep. 113.

Where plaintiff sues a corporation, and defendant specifically denies corporate existence, the burden of proving it is on the plaintiff. *Davis v. Bank*, 70 N. W. Rep. 963.]

Third. To make and use a common seal, and alter the same at pleasure.

Fourth. To hold personal estate, and all such real estate as may be necessary for the legitimate business of the corporation.

Eminent domain. Const., art. I, § 21. Title to real estate of dissolved corporation. § 329. Corporation may convey lands. § 350. Taxation. §§ 3897-4042. Foreign corporation cannot hold land. § 4396. But may enforce lien upon. § 4399.

[Want of capacity to take title to real estate cannot be set up by vendee. *Land Co. v. Bushnell*, 11 Neb. 194; s. c., 8 N. W. Rep. 389.

Note executed and delivered by president of corporation in payment of property purchased by it before organization of such corporation is completed is valid in hands of assignee of the payee. *Cattle Co. v. Bank*, 21 Neb. 644; s. c., 33 N. W. Rep. 271.

Officers who in good faith purchase its property at judicial sale will be protected in such purchase if he shows affirmatively that he has paid only value of the property. *Horbach v. Marsh*, 37 Neb. 22; s. c., 55 N. W. Rep. 286.

Purchase of land, construction of houses thereon, and allotment of both to subscribers who pay in installments are lawful objects of incorporation under general law, but do not necessitate compliance with act relating to building and loan associations. *Bldg. Assn. v. Barnes*, 39 Neb. 838; s. c., 53 N. W. Rep. 440.

Burden of proof devolves upon corporate officers purchasing securities of a corporation at a discount to show affirmatively that price paid was the fair value of such securities. *Fitzgerald v. Const. Co.*, 41 Neb. 374; s. c., 59 N. W. Rep. 838.

Right of a corporation to hold title to real estate or a lien thereon can only be attacked in a direct proceeding by the State. *Watts v. Gantt*, 42 Neb. 569; s. c., 61 N. W. Rep. 104.

A third person cannot assail a mortgage given by a corporation on the ground of ultra vires. *Beels v. Driving Park Assn.*, 74 N. W. Rep. 581.]

Fifth. To render the interest of the stockholders transferable.

Reduction of capital stock. § 321.

[Stock is personal property. *Williams v. Lowe*, 4 Neb. 397. It may, therefore, be sold by the owner of it; conveyed by will, and descend from an intestate to the administrator. Id.

Pledgee of corporate stock entitled to dividends, though there has been no transfer to him on the

books as required by by-laws. *Bank v. Wilder*, 32 Neb. 456; s. c., 49 N. W. Rep. 369.

Transferee of shares of stock entitled to dividends, when. *Cook v. Monroe*, 63 N. W. Rep. 800. Dividends declared by a corporation belonging to parties in whose name stock was registered, may be sold same as other personal property. Id.]

Sixth. To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation therefor.

[Law of vice-principals, as distinguished from fellow servants, discussed. *R. R. Co. v. Sullivan*, 27 Neb. 679; s. c., 43 N. W. Rep. 415. Criterion is the nature of duties, not rank of employee. Id.

Agents of corporation have no implied authority to give away its property or credit obligations gratuitously. *Robertson v. Bank*, 40 Neb. 235; s. c., 58 N. W. Rep. 715.

A treasurer and bookkeeper, where articles of incorporation require every officer to be a stockholder, may verify a claim for a mechanic's lien. *Chapman v. Brewer*, 43 Neb. 891; s. c., 62 N. W. Rep. 320.

Where officers of corporation know that secretary's report is false and induce one who relies on it to purchase corporate stock on faith of the report, purchaser may have contract canceled. *Foley v. Holtry*, 43 Neb. 133; s. c., 61 N. W. Rep. 120.

The term "scope of authority," as applied to acts of officers and agents, defined. *Fitzgerald v. Const. Co.*, 62 N. W. Rep. 899.

The fact one is shown to be a secretary and treasurer of a corporation will not authorize the presumption that he is a stockholder. *Horbach v. Tyrell*, 48 Neb. 514; s. c., 67 N. W. Rep. 485, 483.]

Seventh. To make by-laws, not inconsistent with any existing law, for the management of its affairs.

By-laws to be posted. § 348.

§ 338. The powers enumerated in the preceding section shall vest in every corporation in this State, whether the same be formed without or by legislative enactment, although they may not be specified in its charter, or as articles of association.

See § 320.

[A corporation is a mere creature of statute, possessing only those powers and purposes which its charter confers upon it. *Smith v. Steele*, 8 Neb. 118.

The powers of a corporation organized under legislative statutes are such, and such only, as the statutes confer. The charter of a corporation is the measure of its powers, and the enumeration of those powers implies the exception of all others. *State v. R. R. Co.*, 24 Neb. 143; s. c., 38 N. W. Rep. 43.

Assent by corporators to corporate acts will be presumed only as to acts legally done. Presumption is that corporations will do none but legal acts. *Livesey v. Hotel*, 5 Neb. 69.

Unlawful acts of a corporation are not limited to those which are mala prohibita and malum in se, but include powers which the corporation is not authorized to exercise, and contracts which it is not empowered to make. *State v. Distilling Co.*, 29 Neb. 700; s. c., 46 N. W. Rep. 155.

A company formed by consolidation from pre-existing ones may exercise right of eminent domain and other corporate franchises. *Trester v. Ry. Co.*, 23 Neb. 177; s. c., 49 N. W. Rep. 1110.

Contracts of a corporation which are not contrary to express provisions of charter are presumed to be within its powers, and the burden



is upon one denying their validity to prove the facts which render them *ultra vires*. *Gorder v. Canning Co.*, 36 Neb. 548; s. c., 54 N. W. Rep. 830.

Relation of directors to stockholders is fiduciary, and their contracts and dealings with respect to corporate property will be carefully scrutinized by the courts. *Id.*

Such contracts are not necessarily void, and will not be so if made in good faith and are beneficial to the corporation which has, with sanction of stockholders, received and appropriated the consideration without offering to make restitution. *Id.*

Persons who are directors of two corporations have no implied authority to bind either by contracts in respect to subjects in which their interests are adverse. *Fitzgerald v. Const. Co.*, 62 N. W. Rep. 899.

A contract held to be properly executed by a corporation. *Vinegar Co. v. Burns*, 68 N. W. Rep. 492.

A corporation may compromise a doubtful claim against it, though a doubt arises in regard to its power to enter into contracts like that creating the claim. *Ins. Co. v. Messe*, 69 N. W. Rep. 113.]

§ 339. Every corporation, previous to the commencement of any business, except its own organization, when the same is not formed by legislative enactment, must adopt articles of incorporation, and have them recorded in the office of the county clerk of the county or counties in which the business is to be transacted, in a book kept for that purpose.

This section is repealed by chapter 18 of Laws of 1897. See Act 2, at p. 25. Change in articles to be recorded. § 346. May commence business immediately. § 345. See § 357.

[Statutes and articles of incorporation together constitute charter. *Livesey v. Hotel*, 5 Neb. 74; *Smith v. Steele*, 8 id. 118. And filing articles is a condition precedent to exercise of corporate franchises. *Abbott v. Smelting Co.*, 4 Neb. 421. A mere association of individuals is not a corporation, and members thereof will be personally liable *Id.*

Where there was substantial compliance with law requiring articles of incorporation to be filed and published, mere defects, even if they existed, do not render the articles void, and it was held that company was a *de facto* corporation. *Porter v. Banking Co.*, 36 Neb. 271; s. c., 54 N. W. Rep. 424.

A *de jure* corporation is one whose right to exercise corporate functions would prove invulnerable if asserted by the State in *quo warranto* proceedings. *Capps v. Prospecting Co.*, 40 Neb. 470; s. c., 58 N. W. Rep. 956.

Corporation *de jure* does not exist where there had been a failure to file articles in office of county clerk of county in which principal place of business was to be located. *Id.*]

§ 340. Corporations for the construction of works of internal improvement must also file in the office of the secretary of State a copy of their articles of association, and the same shall be recorded in a book kept for that purpose.

See Act 2, at p. 25.

§ 341. The articles of incorporation must fix the highest amount of indebtedness or liability to which the corporation shall, at any one time, be subject, which must in no

case exceed two-thirds of the capital stock; Provided, however, That the above limitation shall not apply to debts for the risks of insurance companies, deposits in banks, and the notes, bonds, or debentures of any loan or trust company organized under the provisions of this chapter, where the payment of such notes, bonds, or debentures shall be secured by the actual transfer of real estate, by trust deed, or mortgage, for the payment of such notes, bonds, or debentures, which said real estate so transferred shall be of twice the value of the par value of such notes, bonds, or debentures; Provided, further, That said limitation shall not apply to any loan or trust company's guarantee for the payment after transfer of any notes, bonds, or debentures, where the same is secured by trust deed, or mortgage as above stated.

Amount of existing debts to be published. § 349.

§ 342. If any corporation hereafter created by the legislature shall not organize within one year after its incorporation, its corporate powers shall cease.

See Const., art. XIII, § 6; G. L., § 319.

§ 343. Notice must be published in some newspaper near the principal place of business, for four weeks.

See § 346.

§ 344. Such notice shall contain:

First. The name of the corporation.

Second. The principal place of transacting its business.

Third. The general nature of the business transacted.

Fourth. The amount of capital stock authorized, and the time and conditions on which it is to be paid in.

Fifth. The time of commencement and termination of the corporation.

Sixth. The highest amount of indebtedness or liability to which the corporation is at any time to subject itself.

Seventh. By what officers the affairs of the corporation are to be conducted.

§ 345. Any corporation formed without legislative enactment may commence business as soon as its articles of incorporation are filed by the county clerks of the counties, as required by this subdivision, and shall be valid if a copy of its articles be filed in the office of the secretary of State, and the notice required be published within four months from the time of filing such articles in the clerk's office.

See § 339.

[Filing articles is a condition precedent to exercise of corporate franchises. *Abbott v. Smelting Co.*, 4 Neb. 421.]



§ 346. Every change in any of the above matters shall be recorded and published in the same manner as the original articles are required by law.

See § 343.

§ 347. No corporation can be dissolved by the members thereof, except by consent of two-thirds of all its members, which consent must be entered on its records, unless a different rule has been adopted in its articles of incorporation.

Dissolved corporation. See §§ 326-335.

§ 348. A copy of the by-laws of the corporation, and the names of all the officers appended thereto, must be posted in some conspicuous place, at the places of doing business, subject to public inspection.

Power to make by-laws. § 337 (seventh).

§ 349. Every corporation hereafter created shall give notice annually, in some newspaper printed in the county or counties in which the business is transacted, and in case there is no newspaper printed therein, then in the nearest paper in the State, of the amount of all existing debts of the corporation, which notice shall be signed by the president and a majority of the directors, and if any corporation shall fail to do so, after the assets of the corporation are first exhausted, then all the stockholders of the corporation shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be contracted before such notice is given, to the extent of the unpaid subscription of any stockholder to the capital stock of such corporation, and in addition thereto the amount of capital stock owned by such individuals.

Articles must fix highest amount of indebtedness. § 341. Penalty. § 352.

[The debts referred to in this section and section 352 are debts arising upon contracts, express or implied, and not damages for torts. *Doolittle v. Marsh*, 11 Neb. 243; s. c., 9 N. W. Rep. 54.]

Stockholders jointly and severally liable for debts where officers fail to make a public notice required by law. *Smith v. Steele*, 8 Neb. 117. One or more stockholders may compel officers, by mandamus, to make a public statement required by this statute. *Id.*

Action under this section is quasi-penal only, and not barred in one year as a penal action, the limitation being same as any other contracts. *Howell v. Roberts*, 29 Neb. 487; s. c., 45 N. W. Rep. 923; *Coy v. Jones*, 30 Neb. 799; s. c., 47 N. W. Rep. 208.

In order to recover from stockholders for failure to give the statutory notice of its indebtedness, it must affirmatively appear that the credit was given to the corporation while it was in default of the required notice. *Gorder v. Canning Co.*, 36 Neb. 548; s. c., 54 N. W. Rep. 830.

Stockholders are not liable under above section, or under section 352, for a debt which was not incurred while officers were in default in publishing required notice. *Porter v. Banking Co.*, 36 Neb. 271; s. c., 54 N. W. Rep. 424.

Under above section, the original subscribers for stock are liable to creditors of the corporation

for amount unpaid on such subscription, and such liability shall follow without releasing such subscriber. *Bank v. Gibson*, 37 Neb. 750; s. c., 56 N. W. Rep. 616.

When law prescribes what liability of stockholder shall be, it prescribes liability in a corporation de jure. *Pub. Co. v. Bank*, 41 Neb. 175; s. c., 59 N. W. Rep. 683. When such statute so prescribes amount of such liability, it is intended as a limitation upon his exemption from liability for corporate debts. *Id.*

But statute providing that, until certain things are done by persons forming the corporation, the stockholders thereof shall be liable for corporate debts, is declaratory of the common law. *Id.* Until requirements of such a statute have been complied with, stockholders are jointly and severally liable for the debts, and such a statute and rights of creditors acquired thereunder are contractual. *Id.*

The law commanding a corporation to do certain acts, and declaring that all stockholders shall be liable for corporate debts in case the corporation fails to comply, is penal. *Id.*

Creditors of a de jure corporation have no right of action against a stockholder before their claims against corporation have been reduced to judgment and execution returned unsatisfied. *Pub. Co. v. Bank*, 41 Neb. 175; s. c., 59 N. W. Rep. 683.

Action on this section cannot be maintained until after a judgment against the corporation determining the amount owing by it. *Ball v. Wicks*, 63 N. W. Rep. 806.

Section declared constitutional. *Kleckner v. Turk*, 63 N. W. Rep. 469. Section applies to railroad corporations. *White v. Blum*, 4 Neb. 555.]

§ 350. It shall be lawful for any corporation to convey lands by deed, sealed by the common seal of said corporation, and signed by the president or presiding officer of the board of directors of the corporation; and such deed, when acknowledged by such officer to be an act of the corporation, or proved in the usual form prescribed for other conveyances for lands, shall be recorded in the clerk's office of the county in which the lands lie, in like manner as other deeds.

Power to hold land. § 337 (fourth). Foreign corporation cannot hold land. § 4396.

[A deed executed in name of president of a corporation, purporting to convey its lands, is inoperative. *Zoller v. Ide*, 1 Neb. 439.]

A resolution recorded on journal of proceedings of a corporation, authorizing a party to negotiate a loan for it, and execute a mortgage to secure same, is sufficient authority in that behalf. *Cook v. Kuhn*, 1 Neb. 472.

A corporation which has enjoyed the fruits of a loan, which it has authorized to be made, cannot avoid the security which its officers have given, until it has done equity by repaying the money loaned. *Id.*

Chattel mortgage given to president in his individual capacity, held fraudulent on facts stated. *Burley v. Marsh*, 11 Neb. 291; s. c., 9 N. W. Rep. 48.

Purchase by individual member inures to benefit of the corporation. *Einspar v. Wagner*, 12 Neb. 479; s. c., 11 N. W. Rep. 891.

Where deed or mortgage purporting to have been executed by a corporation is signed and acknowledged in its behalf by president and secretary, with corporate seal attached, presumption is that it was executed by authority of the corporation and burden of proof is upon him who denies such authority. *Gorder v. Canning Co.*, 36 Neb. 548; s. c., 54 N. W. Rep. 830.

Where mortgage made by corporation contains a copy of resolution showing their adoption by

## Arrears of stockholders; liability of stockholders, etc.—Stats., §§ 351–355.

board of directors and authority for making the mortgage, no further proof is necessary to show a prima facie authorization by the directors. *Hayden v. Ry. Co.*, 43 Neb. 681; s. c., 62 N. W. Rep. 73.

An insolvent corporation may transfer its property in good faith for proper purposes. *Shaw v. Robinson, etc., Co.*, 69 N. W. Rep. 947.]

§ 351. All corporations may sue for and recover from their respective members in any court of competent jurisdiction, all arrears or other debts due, or other demands which now are or hereafter may be owing to them, in like manner as they might sue for and recover the same from any indifferent person who might be a member, any law, usage, or custom to the contrary notwithstanding.

[Capital stock must be fully subscribed before action will lie for assessments, unless there is a clear provision to proceed in execution of main design with a less subscription, or a waiver of conditions precedent. *Livesey v. Hotel*, 5 Neb. 66; *Hale v. Sanborn*, 16 id. 3; s. c., 20 N. W. Rep. 97. Facts showing such waiver must be pleaded. *Id.* A waiver is a question of fact for the jury. *Estabrook v. Hotel*, 5 Neb. 79.

Conditional subscription need not be paid until condition performed. *McCann v. Ins. Co.*, 4 Neb. 259.

A condition without assent of subscriber does not alter the rule. *Bridge v. Fuhrman*, 8 Neb. 99. Authority to forfeit and sell stock for non-payment of assessments is statutory; action does not lie where charter does not authorize such remedy. *Williams v. Lowe*, 4 Neb. 397.

In absence of directions by him, payments made by stockholder may be applied on any legal demand corporation may have upon him. *Clarke v. R. R. Co.*, 4 Neb. 471. Action against subscribers; petition held sufficient. *Bank v. Raine*, 31 Neb. 520; s. c., 48 N. W. Rep. 262.

Unless otherwise provided, the whole amount of capital fixed by subscription contract must be fully secured by a bona fide subscription before action will lie upon the personal contract of a subscriber to recover an assessment on his several shares. *Hards v. Imp. Co.*, 35 Neb. 263; s. c., 53 N. W. Rep. 73.

In action on contract of subscription to stock, testimony tending to show that defendant waived conditions in respect to amount of stock to be subscribed before entering upon the main purpose of the corporation, should be submitted to the jury. *Id.* But defendant will not be released because directors passed a resolution to drop names of delinquent subscribers from the list, where evidence shows that such action was not taken, the defendant was not excluded from participating in the management of the corporation, and that he subsequently obtained a reduction from amount of purchase from company on account of his membership. *Hays v. Lumb. Co.*, 35 Neb. 512; s. c., 53 N. W. Rep. 381.

One to whom stock is issued, who pays assessments thereon, acts as an officer and takes part in the management of corporation, is estopped to deny his subscription. *Ildg. Assn. v. Barnes*, 33 Neb. 840; s. c., 58 N. W. Rep. 440.

Subscription may be in parol. *Id.* An agreement between promoters and subscribers that the latter need not be is void. *Id.*

Petition in action on corporate subscription alleges that on a certain day, long passed, full capital stock was subscribed, is sufficient on that point, at least if not objected to by motion. *Id.*

It is no defense to suit on contract for corporate stock that all the stock authorized by articles of incorporation has not been subscribed. *Mfg. Co. v. Sheldon*, 62 N. W. Rep. 480.

Capital stock must be fully subscribed before action will be against a subscriber to recover assessments. *Macfarland v. West Side Imp. Assn.*, 73 N. W. Rep. 736.

Where a note was made for unpaid subscriptions to capital stock, the payment of such note, to be available, must be pleaded. *Wyman v. Williams*, 73 N. W. Rep. 285.]

§ 352. If any corporation fail to comply, substantially, with the provisions of this subdivision, in relation to giving notice and other requisitions of organization, after the assets of corporation are first exhausted, then the property of any stockholder shall be liable for the corporate debts, to the extent of the unpaid subscription of any stockholder to the capital stock of such corporation, and in addition thereto the amount of capital stock owned by such individual.

See Const., art. XIII, §§ 4, 7; G. L., § 349, and note.

[Stockholders treated as partners under statutes making them individually liable for debt of corporation. *White v. Blum*, 4 Neb. 560.

Section declared constitutional. *Kleckner v. Turk*, 63 N. W. Rep. 469.

When provisions of the statute not complied with, property of all stockholders shall be liable for corporate debts. *Abbott v. Smelting Co.*, 4 Neb. 425. Section applies only to indebtedness contracted during time officers are in default of publishing required notice. *Smith v. Steele*, 8 Neb. 118.

A corporation held to have waived its right to cancel stock for fraud. *Bank v. Russell*, 69 N. W. Rep. 763.

A purchaser of stock held not an innocent purchaser for value. *Id.*]

§ 353. If any deception be practiced by any corporation upon the public or individuals, in relation to its means or liabilities, all those engaged in such deception shall be liable to a fine not exceeding five hundred dollars; and any person injured by such deception may recover double the amount of damages he may have sustained by reason of the same, in any court having jurisdiction of the amount claimed.

§ 354. A division of the funds of a corporation, for other purposes than those mentioned in the act granting the charter and the payment of dividends, which have insufficient funds to meet the liabilities of the corporation, shall be deemed a violation of the provisions of this subdivision, and subject those engaged therein to the penalties herein prescribed.

[Stockholders may enjoin directors to prevent violation of charter, or misappropriation of corporate property. *Wilcox v. Bickel*, 11 Neb. 156; s. c., 8 N. W. Rep. 436.

But where a stockholder has signed a contract disposing of assets of corporation, knowing its contents, and voting at meetings of company to carry it into effect, he cannot afterward repudiate it, or question the bona fides of the transaction, no fraud being shown. *Clarke v. R. R. Co.*, 4 Neb. 458.]

§ 355. Any violation of the provisions of this subdivision shall cause a forfeiture of all the privileges conferred by the same, and the court may proceed to close the affairs of



Defense of want of legal organization; foreign corporation — Stats., §§ 356-358, 486.

the corporation by an information for that purpose.

Proceedings on information. §§ 5238-5260.

[Repeated an willful acts of misuser or non-user by a corporation which are of the essence of the contract between it and the State, constitute just ground of forfeiture of franchise. *State v. Ferry Co.*, 11 Neb. 354; s. c., 9 N. W. Rep. 563.

Ownership of all the stock by one person does not work a dissolution. *Harrington v. Connor*, 70 N. W. Rep. 911.]

§ 356. Corporations whose charters expire by their own limitation, or by the voluntary acts of the stockholders, may continue to act for the purpose of closing their business, but for no other purpose.

§ 357. No body of men acting as a corporation under the provisions of this subdivision shall be permitted to set up the want of legal organization as a defense to any action brought against them as a corporation; nor shall any person sued on a contract made with such corporation, or for an injury to the property of such corporation, be permitted to set up the want of legal organization in defense of such action.

Proceedings on information against corporations. §§ 5238-5260. See § 337, second, note.

[Existence of a corporation cannot be questioned collaterally. *Assn. v. Graham*, 7 Neb. 177; *Zunkle v. Cunningham*, 10 id. 164; s. c., 4 N. W. Rep. 951.

Persons who contract in writing with a corporation having no franchises are not estopped from denying its corporate capacity. *Abbott v. Smelting Co.*, 4 Neb. 423.

General denial to complaint by corporation does not put in issue corporate character. *Ins. Co. v. Robinson*, 8 Neb. 455; *Herron v. Cole*, 25 id. 707; s. c., 41 N. W. Rep. 133. Want of capacity to take title to real estate cannot be set up by vendee. *Land Co. v. Bushnell*, 11 Neb. 194; s. c., 8 N. W. Rep. 389.

Burden of proof is upon person who asserts existence of franchise or law under which assumed powers are conferred and user or franchise thereunder. *Abbott v. Smelting Co.*, supra. In an action on a note payable to a bank, defendant cannot raise question of plaintiff's incorporation. *Bank v. Capps*, 32 Neb. 244; s. c., 49 N. W. Rep. 223.

Subscription of stock to preliminary articles of association, not purporting to be a contract with an existing corporation, does not estop subscriber from afterward denying legal existence of the corporation in a suit by the alleged corporation upon the subscription. *Capps v. Prospecting Co.*, 40 Neb. 470; s. c., 58 N. W. Rep. 956.

An organization which attempts in good faith to incorporate a body under lawful authority and exercise corporate functions is a corporation de facto, and its legal existence cannot ordinarily be attacked collaterally. *Haas v. Bank*, 41 Neb. 754; s. c., 60 N. W. Rep. 85.

Sufficiency of evidence to show corporate existence so as to relieve it from collateral attack. *Chapman v. Brewer*, 43 Neb. 890; s. c., 62 N. W. Rep. 320.

Legality of organization of corporation de facto cannot be attacked collaterally. *Kleckner v. Turk*, 63 N. W. Rep. 469.

Not necessary for a bank to prove its corporate existence when suing upon a note. *Holland v. Bank*, 22 Neb. 576; s. c., 36 N. W. Rep. 113.

Persons contracting with a de facto corporation, relying upon its corporate character, cannot attack its corporate character collaterally so as to hold stockholders liable individually. *Hogue v. Bank*, 47 Neb. 929; s. c., 66 N. W. Rep. 1636; *L. & B. Assn. v. Drummoud*, 68 id. 375; *Bank v. Ferguson*, id. 370.

Where plaintiff sues a corporation, and defendant specifically denies corporate existence, the burden of proving it is on the plaintiff. *Davis v. Bank*, 70 N. W. Rep. 963.

Answer in action on subscription held not to put in issue the corporate existence of an alleged corporation. *Kelly v. Nebraska Exposition Assn.*, 72 N. W. Rep. 356; *State v. Board*, 74 id. 254.]

§ 358. Any corporation organized under the laws of any other State or States, territory or territories, which has filed, or may hereafter file with the secretary of State of this State a true copy of its charter or articles of association, shall, on filing with the secretary of State a certified copy of the resolution adopted by its board of directors, accepting the provisions of this act, be and become a body corporate of this State.

Foreign corporation cannot hold real estate. § 4396. But may enforce lien against. § 4399. Venue of actions against. § 4595. Service of summons upon. §§ 4613, 5383.

[In the following cases defendants were held to be domestic corporations and not corporations organized under laws of another State or of the United States. *State v. R. R. Co.*, 25 Neb. 163; *State v. Ry. Co.*, id. 164; s. c., 41 N. W. Rep. 127; *State v. R. R. Co.*, 25 Neb. 165; s. c., 41 N. W. Rep. 128.

Where a foreign corporation transacts business in the State with citizens of the State out of which claims arise, they may be enforced in the State, if jurisdiction can be obtained. *Canning Co. v. Mfg. Co.*, 68 N. W. Rep. 929.]

### Manufacturing Corporations.

§ 486. Whenever any number of persons associate themselves together for the purpose of engaging in the business of manufacturing, they shall, under their hands and seals, make a certificate, specifying the amount of capital stock necessary, the amount of each share, the name of the place where such manufacturing establishment shall be located, and the name and style by which such company shall be known; said certificate shall be acknowledged, certified, and forwarded to the secretary of State, and by him be recorded and copied; and when so incorporated, they are hereby authorized to carry on the manufacturing operations named in said certificate of incorporation, and by the name and style provided in said certificate, shall be deemed a body corporate with succession, and they and their associates, successors, and assigns shall have the same general corporate powers as are conferred in this chapter upon bridge companies, and subject to all the restrictions hereafter provided.



Manufacturing co's; directors; subscriptions; taxation — Stats., §§ 487, 488, 3897, 3903, 3904.

§ 487. The annual meeting of the stockholders shall be held on the first Monday of January in each year, at which meeting the directors of the company shall be elected, and such other lawful business done as the stockholders shall deem necessary and proper; and should they fail to elect directors at the annual meeting, they shall hold a special meeting at some subsequent time for that purpose, by giving thirty days' notice thereof in some newspaper of general circulation in such county; the directors shall hold their offices until their successors are chosen and qualified, but no person shall be a director after ceasing to be a stockholder. Immediately after the election, the directors shall elect one of their number president of the corporation and may appoint such other officers and agents as they may deem proper to transact their business, and prescribe the amount of compensation to be allowed them for their services, and such officers, when required by the by-laws, shall give bonds to the satisfaction of the directors for the faithful discharge of the trust committed to them, and shall have power and are hereby authorized to make such rules, regulations, and by-laws as may be necessary for their government, not inconsistent with the Constitution of this State. The directors shall have the general management of the affairs of the company, and may dispose of the residue of the capital stock at any time remaining unsubscribed, in such manner as the stockholders for the time being may prescribe, and may employ the capital and means of the company in such manufactures as they shall deem best for the company, and for the erection and maintenance of such machinery, dams, buildings, races, and water courses, subject always to the control of the stockholders, as may be necessary in the business of manufacturing, but for no other purposes than those connected with and pertaining to said business; they shall cause a record to be kept of all stock subscribed and transferred, and all business transactions, and their books and records shall at all reasonable times be open to the inspection of any and every stockholder; they shall also, when required, present to the stockholders reports, in writing, of the situation and the amount of business of the company, and declare and make such dividends of the profits from the business of the company, not reducing the capital stock while they have outstanding liabilities, as they shall deem expedient.

§ 488. The persons named in the certificate of incorporation, or a majority of them, shall be commissioners to open the books for the subscription to the capital stock of said company, and at such times and places as they shall deem proper, and the said company are authorized to commence operations upon the subscription of ten per cent. of said stock.

## CHAPTER XLVI.

### Taxation.

- Sec. 3897. What property to be taxed.  
 3903. Personal property, how to be listed.  
 3904. Same, where to be listed.  
 3911. Gas companies.  
 3912. Stage companies.  
 3913. Transportation companies.  
 3928. All companies, except insurance companies, must deliver a sworn statement of amount of capital stock.  
 4042. Failure to pay taxes; officers guilty of misdemeanor.

§ 3897. The property named in this section shall be assessed and taxed, except so much thereof as may be in this chapter exempted: First—All real and personal property in this State. Second—All moneys, credits, bonds, or stocks, and other investments, the shares of stock of incorporated companies and associations, and all other personal property, including property in transitu to or from this State, used, held, owned, or controlled by persons residing in this State. Third—The shares of capital stock of banks and banking companies doing business in this State. Fourth—The capital stock of companies and associations incorporated under the laws of this State.

See Const., art. IX, §§ 1, 4.

[Grants to railroads not exempt. *White v. R. R. Co.*, 5 Neb. 397.]

§ 3903. Personal property shall be listed in the manner following: First—Every person of full age and sound mind, being a resident of this State, shall list all his moneys, credits, bonds, or stocks, shares of stock of joint or other companies (when the capital stock of such companies is not assessed in this State), moneys loaned or invested, annuities, franchises, royalties, and other personal property. Second—He shall also list all moneys and other personal property invested, loaned, or otherwise controlled by him as the agent or attorney, or on account of any other person or persons, company, or corporation whatsoever, and all moneys deposited subject to his order, check, or draft, and credits due from or owing by any person or persons, body corporate or politic, whether in or out of the county. \* \* \* Seventh—The property of corporations whose assets are in the hands of receivers (shall be listed) by such receivers. Eighth—The property of a body politic or corporate, by the president or proper agent or officer thereof. \* \* \*

§ 3904. Personal property, except such as is required in this chapter to be listed and assessed otherwise, shall be listed and assessed in the county, precinct, township, city, or village where the owner resides. The capital stock and franchises of corporations and persons, except as may be otherwise provided, shall be listed and taxed in

Taxation; real property — Stats., §§ 3911–3913, 3928, 4042, 4396, 4399.

the county, precinct, township, city, or village where the principal office or place of business of such corporation or persons is located in this State. If there be no principal office or place of business in this State, then at the place in this State where any such corporation or person transacts business.

§ 3911. The personal property of gas companies, except the pipes laid down, shall be listed and assessed in the town, village, district, or city where the principal works are located. Gas mains and pipes laid in roads, streets, or alleys, shall be held to be personal property, and listed and assessed as such in the town, district, village or city where the same are laid.

§ 3912. The horses, stages, and other personal property of stage companies, or persons operating stage lines, shall be listed and assessed in the county, town, city, or district, where they are usually kept.

§ 3913. The personal property of express or transportation companies shall be listed and assessed in the county, township, precinct, city, or village where the same is usually kept.

§ 3928. Bridge, express, ferry, gas, manufacturing, mining, savings bank, stage, steamboat, street railroad, transportation, and all other companies and associations incorporated under the laws of this State, except insurance companies, shall, in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

First. The name and location of the company or association.

Second. The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

Third. The amount of capital stock made up.

Fourth. The market value, or if no market value then the actual value of the shares of stock.

Fifth. The total amount of all indebtedness, except the indebtedness for current expenses — excluding from such expenses the amount paid for the purchase or improvement of property.

Sixth. The assessed valuation of all its real and personal property (which real and personal property shall be listed and valued as other real and personal property is listed and assessed under this chapter). The aggregate amount of the fifth and sixth items shall be deducted from the aggregate value of its shares of stock, as provided by the fourth item, and the remainder, if any, shall be listed by the assessor in the name of such company or corporation as capital stock thereof. In all cases of failure or refusal of any person, officer, company, or association to make such return or statement, it shall be the duty of the assessor to make

such return or statement from the best information which he can obtain.

§ 4042. When any corporation doing business in this State shall fail or neglect to pay any tax assessed or charged against it, when the same shall become delinquent, it shall be lawful for the county treasurer to notify any agent or officer of said company in the county where such tax is delinquent, that the same is delinquent, and the amount due, and shall further notify such officer or agent to pay over all moneys that may be in his hands, or that may afterwards come into his hands, belonging to such corporation, not exceeding the amount of tax due, to such county treasurer, and if such agent or officer shall fail to so pay over said moneys to the county treasurer, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars nor more than five hundred dollars.

## CHAPTER XLVII.

### Real Property.

Sec. 4396. Foreign corporations prohibited from holding real estate.

4399. May enforce lien against real estate.

§ 4396. Non-resident aliens and corporations not incorporated under the laws of the State of Nebraska are hereby prohibited from acquiring title to or taking or holding any lands or real estate in this State by descent, devise, purchase, or otherwise, \* \* \*

Foreign corporation may become domestic.  
§ 358.

[Foreign corporations are forbidden to hold real estate in Nebraska, but their title is valid against every one but the State, and can only be divested by it and under proper proceedings. *Carlow v. Aultman*, 28 Neb. 676; s. e., 44 N. W. Rep. 873.]

Foreign corporations may acquire title by adverse possession as against every one except the State. *Myers v. McGavock*, 39 Neb. 870; s. e., 53 N. W. Rep. 522.

A corporation chartered by act of congress and incompetent to acquire title to land in this State may still maintain a possession adverse to all persons except the State. *Hanlon v. Ry. Co.*, 40 Neb. 52; s. e., 58 N. W. Rep. 590.

Right of a corporation to hold title to real estate or a lien thereon can only be attacked in a direct proceeding by the State. *Watts v. Gantt*, 42 Neb. 869; s. e., 61 N. W. Rep. 104.]

§ 4399. This act shall not, nor shall anything else in the statutes of Nebraska, prevent the holders, whether non-resident aliens or corporations not organized under the laws of the State of Nebraska, of liens upon real estate or any interest therein, whether heretofore or hereafter acquired, from holding or taking a valid title to the real estate subject to such liens, nor shall it prevent any such alien or corporation from enforcing any lien or judgment for any debt or liability now existing, or which may here-

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Lien on real property — Stats., § 4399.

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after be created, nor from becoming a purchaser at any sale made for the purpose of collecting or enforcing the collection of such debt or judgment; Provided, however, That all lands so acquired shall be sold within ten (10) years after the title thereto shall be perfected in such non-resident alien or foreign corporation, and in default of such sale within such time, such real estate shall revert and escheat to the State of Nebraska, as provided in this act; Provided further, That the provisions of this act shall not ap-

ply to the real estate necessary for the construction and operation of railroads; And provided further, That nothing in this act shall be construed to prohibit any non-resident alien or foreign corporation from purchasing and acquiring title to so much real estate as shall be necessary for the purpose of erecting and maintaining manufacturing establishments; And provided further, That the provisions of this act shall not apply to any real estate lying within the corporate limits of cities and towns.



## PART III. THE CODES OF CIVIL AND CRIMINAL PROCEDURE.

### CODE OF CIVIL PROCEDURE.

- Tit. IV. Venue of actions.  
 V. Commencement of civil actions.  
     Ch. 2. Service of summons.  
 VIII. Provisional remedies.  
     Ch. 3. Attachment.  
         Art. 1. General attachments.  
 XXIII. Informations.  
 XXX. Justices of the peace.  
     Ch. 2. Commencement of suits.

### TITLE IV. VENUE OF ACTIONS.

- Sec. 4591. Venue of actions against corporations in general.  
 4592. Against railroad company for injury to person or property.  
 4593. Turnpike company.  
 4594. These provisions do not apply where charter prescribes place of bringing suit.  
 4595. Against foreign corporation.

§ 4591. An action other than one of those mentioned in the first three sections of this title (Actions relating to recovery, partition, etc., of real property), against a corporation created by the laws of this State, may be brought in the county in which it is situated, or has its principal office or place of business; but if such corporation be an insurance company, the action may be brought in the county where the cause of action, or some part thereof, arose.

See § 337 (second), note.

[Situe of domestic corporation, for purposes of being sued, is any county where place of business is maintained and corporate business transacted through an agent, though principal office and chief officers are in another county. *B. & E. Co. v. Snyder*, 39 Neb. 634; s. c., 58 N. W. Rep. 149.

Where corporation fails to challenge jurisdiction of court or to plead wrongful venue as a defense it waives objection that it was sued in wrong county. *Bank v. Orchard*, 43 Neb. 580; s. c., 61 N. W. Rep. 834.]

§ 4592. An action against a railroad company, or an owner of a line of mail stages, or other coaches, for an injury to person or property upon the road or line, or upon a liability as a carrier, may be brought in any county through or into which the said road or line passes.

[Section applies to action against railroad company for damages from overflow caused by one of its bridges. *R. R. Co. v. Brown*, 29 Neb. 501; s. c., 46 N. W. Rep. 39.]

§ 4593. An action other than one of those mentioned in the first three sections of this title,\* against a turnpike road company, may

be brought in any county in which any part of the road lies.

§ 4594. The provisions of this title shall not apply in the case of any corporation created by a law of this State whose charter prescribes a place where alone a suit against such corporation may be brought.

§ 4595. An action other than one of those mentioned in the first three sections of this title,\* against a non-resident of this State or a foreign corporation, may be brought in any county in which there may be property of, or debts owing to, said defendant, or where said defendant may be found; but if said defendant be a foreign insurance company, the action may be brought in any county where the cause, or some part thereof, arose.

### TITLE V. COMMENCEMENT OF CIVIL ACTIONS.

#### CHAPTER II.

#### Service of Summons.

- Sec. 4611. Summons against corporation, upon whom served.  
 4612. Against insurance companies.  
 4613. Against a foreign corporation.  
 4625. Corporation owning real estate may appoint agent for process in county.  
 4626. County clerk to keep record of appointment: fees therefor.

§ 4611. A summons against a corporation may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer; or, if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office, or last usual place of business of such corporation.

See § 5381.

[Service of summons on managing agent of a foreign corporation who is but temporarily in the State is sufficient, where claim sued on is a debt contracted in the State. *Klopp v. Water-Works Co.*, 34 Neb. 808; s. c., 52 N. W. Rep. 819. Where president or chief officer is absent from county, service may be had upon treasurer. *McMurtrie v. Tuttle*, 13 Neb. 232; s. c., 13 N. W. Rep. 213.]

§ 4612. When the defendant is an incorporated insurance company, and the action is brought in a county in which there is an

\*Actions relating to recovery, partition, etc., of real property.

\*Actions relating to recovery, partition, etc., of real property.

Service of summons; attachment — Code Civ. Pro., §§ 4613, 4625, 4626, 4708, 4710.

agency thereof, the service may be upon the chief officer of such agency.

See § 5382.

§ 4613. When the defendant is a foreign corporation, having a managing agent in this State, the service may be upon such agent.

See § 5383.

[Foreign corporation having no property of debtor in this State, nor owing money to him payable therein, not subject to garnishment. *Wright v. R. R. Co.*, 19 Neb. 182; s. c., 27 N. W. Rep. 90.

An agent invested with general conduct and control, at a particular place of business of a corporation, is a managing agent, within meaning of this section. It is immaterial where he resides. *Porter v. Ry. Co.*, 1 Neb. 14.

Service of summons upon the managing agent of a foreign corporation, held sufficient to confer jurisdiction. *Canning Co. v. Mfg. Co.*, 68 N. W. Rep. 929.]

§ 4625. It shall be lawful for any person, or corporation, owning or claiming any interest or lien upon any real estate lying within this State, to make and file in the office of the county clerk of the county in which such real estate is situated an appointment, in writing, of some person, who shall be a resident of the county in which said lands lie, upon whom process may be sued (served), in any suit, action, or proceeding, concerning or affecting such real estate, to which such owner or claimant shall be made a party. Such appointment shall be acknowledged in the manner provided by law for the acknowledgment of deeds. From and after the filing of such appointment as herein provided, service of any writ, summons, order, or notice, in any suit, action, or proceeding concerning or affecting such real estate shall be made upon the person so appointed and designated in such manner as may be provided by law for the service of process upon persons found in this State, and shall be held and taken to be a valid and effectual service upon such owner or claimant. A copy of such appointment, or of the record thereof, duly certified by the said clerk, shall be deemed sufficient evidence thereof. And no service made by publication shall be valid in respect to any such owner or claimant, who shall have filed an appointment under the provisions of this act; Provided, That such appointment may be at any time revoked by such owner or claimant, but such revocation shall be in writing, duly acknowledged, and filed and recorded in the office of the county clerk in which the appointment shall have been filed and recorded, but such revocation shall not affect any suit or proceedings commenced before the same shall have been recorded; And provided further, That this act shall in nowise affect any action or pro-

ceeding that shall have been commenced before the passage hereof, in which service of process shall have been made in accordance with the law in force at the time of its commencement.

§ 4626. The county clerk of each county shall keep a book in which he shall record such appointments as shall be filed under the provisions of this act and any revocation thereof, and shall be entitled to demand and receive therefor a fee of twenty-five cents, and ten cents for each folio of one hundred words contained therein.

## TITLE VIII. PROVISIONAL REMEDIES.

### CHAPTER III.

#### Attachment.

#### ARTICLE I. GENERAL ATTACHMENTS.

Sec. 4708. Grounds of attachment.

4710. Undertaking unnecessary, when.

§ 4708. The plaintiff in a civil action for the recovery of money may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon the grounds herein stated:

First. When the defendant, or one of several defendants, is a foreign corporation, or a non-resident of this State; \* \* \* But an attachment shall not be granted on the ground that the defendant is a foreign corporation, or a non-resident of the State, for any claim other than a debt or demand arising upon contract, or decree.

See § 337, subd. 2, and cross-references. Execution against stock, how levied. See Act 6, at p. 28.

§ 4710. When the ground of the attachment is that the defendant is a foreign corporation, or a non-resident of the State, the order of attachment may be issued without an undertaking. \* \* \*

## TITLE XXIII. INFORMATIONS.

Sec. 5238. Information to be filed against persons unlawfully acting as corporation.

5239. May be filed by prosecuting attorney.

5240. Must be filed by prosecuting attorney, when.

5241. Information shall consist of what.

5242. Summons.

5243. Defendant shall appear and answer.

5248. Several persons claiming same franchise.

5249. Forfeiture of franchise.

5250. Judgments to relate only to particulars in which privileges have been violated.

5251. If individual file information he is responsible for costs.

5252. Judgment against pretended corporation, costs paid by whom.

5253. Court to appoint three trustees of dissolved corporation.

5254. Trustees shall give bond.

5255. Suit may be brought on such bond.

- Sec. 5236. Trustees shall collect debts and pay liabilities.  
 5237. Courts shall order production of books and papers.  
 5238. Trustees to file inventory.  
 5239. Shall sue for debts and property of the corporation.  
 5260. Directors or officers individually liable.

§ 5238. An information may be filed against any person unlawfully holding or exercising any public office or franchise within this State, or any office in any corporation created by the laws of this State \* \* \*, or when any persons act as a corporation within this State without being authorized by law, or if, being incorporated, they do or omit acts which amount to a surrender or forfeiture of their rights and privileges as a corporation, or when they exercise powers not conferred by law.

Legal organization cannot be attacked collaterally. § 357, and note. See § 355.

[Repeated acts of misuser or non-user constitute just ground for forfeiture of franchise. *State v. Ferry Co.*, 11 Neb. 356; s. c., 9 N. W. Rep. 563.]

§ 5239. Such information may be filed by the prosecuting attorney of the proper county whenever he deems it his duty so to do.

[Information good though not filed by district attorney, if filed by his consent and in his name. *Kane v. People*, 4 Neb. 509.

Where private person has no direct interest, he cannot maintain action. Where State at large is interested, attorney-general is proper party to bring action. *State v. Stein*, 13 Neb. 529; s. c., 14 N. W. Rep. 481.]

§ 5240. He must file such information when directed to do so by the governor, the legislative assembly, or the district court.

§ 5241. Such information shall consist of a plain statement of the facts which constitute the grounds of the proceeding, addressed to the court, which shall stand for an original petition.

[In proceedings to dissolve or declare forfeiture of charter and franchises, corporation is the only necessary party defendant. *State v. R. R. Co.*, 24 Neb. 143; s. c., 38 N. W. Rep. 43.]

§ 5242. Such statement shall be filed in the clerk's office, and summons issued and served in the same manner as hereinbefore provided for the commencement of actions in the district court.

§ 5243. The defendant shall appear and answer such information in the usual way, and issue being joined it shall be tried in the ordinary manner.

§ 5248. When several persons claim to be entitled to the same office or franchise, an information may be filed against all or any

portion thereof, in order to try their respective rights thereto.

§ 5249. If the defendant be found guilty of unlawfully holding or exercising any office, franchise, or privilege, or if a corporation be found to have violated the law by which it holds its existence, or in any other manner to have done acts which amount to a surrender or forfeiture of its privileges, judgment shall be rendered that such defendant be ousted, and altogether excluded from such office, franchise, or privilege, and also that he pay the costs of the proceeding.

§ 5250. If the defendant be found to have exercised merely certain individual powers and privileges to which he was not entitled, the judgment shall be the same as above directed, but only in relation to those particulars in which he is thus exceeding the lawful exercise of his rights and privileges.

§ 5251. When an information is upon the rendition of a private individual, it shall be so stated in the petition and proceedings, and such individual shall be responsible for costs in case they are not adjudged against the defendant. In other cases the title of the cause shall be the same as in a criminal prosecution, and the payment of costs shall be regulated by the same rule.

§ 5252. In case judgment is rendered against a pretended, but not real, corporation, the costs may be collected from any person who has been acting as an officer or proprietor of such pretended corporation.

§ 5253. If a corporation is ousted and dissolved by the proceedings herein authorized, the court shall appoint three disinterested persons as trustees of the creditors and stockholders.

§ 5254. Such trustees shall enter into bond, in such a penalty and with such security as the court may approve, conditioned for the faithful discharge of their trust.

§ 5255. Suit may be brought on such bond by any person injured by the negligence or wrongful act of the trustees in the discharge of their duties.

§ 5256. The trustees shall proceed immediately to collect the debts and pay the liabilities of the corporation, and to divide the surplus among those thereto entitled.

[The franchise of a corporation being annulled, the question of rights of property and of an intervenor therein will not be determined until all claimants can be heard. *State v. Distilling Co.*, 29 Neb. 700; s. c., 46 N. W. Rep. 153.]

§ 5257. The court shall, upon an application for that purpose, order any officer of such corporation, or any other person having possession of any of the effects, books, or papers of the corporation in anywise necessary for the settlement of its affairs, to deliver up the same to the trustees.

§ 5258. As soon as practicable, after their appointment, the trustees shall make and file in the office of the clerk of the court, an



Justice's court; combination of grain dealers— Code Civ. Pro., §§ 5259, 5260, 5850, 5851.

inventory of all the effects, rights, and credits which come to their possession or knowledge, the truth of which inventory shall be sworn to.

§ 5259. They shall sue for and recover the debts and property of the corporation, and shall be responsible to the creditors and stockholders respectively, to the extent of the effects which come to their hands, in the same manner as though they were executors of a deceased person.

§ 5260. When judgment of ouster is rendered against a corporation on account of the misconduct of the directors or officers thereof, such officers shall be jointly and severally liable to an action by any one injured thereby.

## TITLE XXX. JUSTICES OF THE PEACE.

### CHAPTER II.

#### Commencement of Suits.

- Sec. 5381. Summons against corporation, upon whom served.  
 5382. Service upon insurance companies.  
 5383. Upon a foreign corporation.

§ 5381. A summons against a corporation may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer, or if its chief officer be not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or if none of the aforesaid officers can be found, by a copy left at the office, or usual place of business of such corporation, with the person having charge thereof.

See § 4611.

[This provision is applicable to all corporations, having an office or usual place of business in this State, whether foreign or domestic. R. R. Co. v. Manning, 23 Neb. 558; s. c., 37 N. W. Rep. 462.]

§ 5382. When the defendant is an incorporated insurance company, and the action is brought in a county in which there is an agency thereof, the service may be upon the chief officer of such agency.

See § 4612.

§ 5383. When the defendant is a foreign corporation, having a managing agent in this State, the service may be upon such agent.

See § 4613.

[This does not include service under section 5381. R. R. Co. v. Manning, 23 Neb. 558; s. c., 37 N. W. Rep. 462.]

Service on general agent of Ins. Co., good. Ins. Co. v. McLimans, 28 Neb. 653; s. c., 44 N. W. Rep. 991.]

## CRIMINAL CODE.

### CHAPTER XXIII.

#### Miscellaneous Offenses.

Sec. 5850. Combinations of grain dealers for pooling prices to restrain companies, prohibited.

5851. Penalty.

5852. Officers of corporations violating this act guilty of misdemeanor.

§ 5850. It shall be unlawful for any grain dealer or grain dealers, partnership, company, corporation, or association of grain dealers, or any other person or persons, partnership, company, corporation, or association to enter into any agreement, contract, or combination with any other grain dealer or grain dealers, partnership, company, corporation, or association of grain dealers, or any other person or persons, partnership, company, corporation or association, for the pooling of prices of different and competing dealers and buyers, or to divide between them the aggregate net proceeds of the earnings of such dealers and buyers or any portion thereof, or for fixing the price which any grain dealer or grain dealers, partnership, company, corporation, or association of grain dealers, or any other person or persons, partnership, company, corporation, or association shall pay for grain, hogs, cattle, or stock of any kind or nature whatever; and in case of any agreement, contract, or combination for such pooling of prices of different and competing dealers and buyers, or to divide between them the aggregate or net proceeds of the earnings of such dealers and buyers or any portion thereof, or for fixing the price which any grain dealer or grain dealers, partnership, company, corporation, or association of grain dealers, or any other person or persons, partnership, company, corporation, or association shall pay for grain, hogs, cattle, or stock of any kind or nature whatever, each day of its continuance shall be deemed a separate offense.

All pools, trusts and combines prohibited. See Act of 1897, at p. 26.

§ 5851. That in case any grain dealer or grain dealers, partnership, company, corporation, or association of grain dealers, or any other person or persons, partnership, company, corporation, or association subject to the provisions of this act, shall do or cause to be done, or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such grain dealer or grain dealers, partnership, company, corporation, or association of grain dealers, or any other person or persons, partnership, company, corporation, or association shall be liable to the person or persons injured thereby to the

Combination of grain dealers; hours of labor — Crim. Code, §§ 5852, 5878; Act, 1891, ch. 54.

full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fees shall be taxed and collected as a part of the costs in the case; and in any such action brought for the recovery of damages, the court before whom the same shall be pending may compel any grain dealer or grain dealers, partnership, company, corporation, or association of grain dealers, or any other person or persons, partnership, company, corporation, or association of grain dealers, or any person or persons, partnership, company, corporation, or association, subject to the provisions of this act, or any director, officer, receiver, trustee, agent, employer, or clerk of them or either of them, defendant in such suit, to attend, appear, and testify in such case, and may compel the production of the books and papers of such grain dealer or grain dealers, partnership, corporation, company, or association of grain dealers, or any other person or persons, partnership, company, corporation, or association, party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person in the trial of any criminal proceeding.

§ 5852. That any grain dealer or grain dealers, partnership, company, corporation, or association of grain dealers, or any other person or persons, partnership, company, corporation, or association subject to the provisions of this act, or any director or officer, or any receiver, trustee, clerk, lessee, agent, or person acting for or employed by them or either of them, who alone or with any other partnership, company, corporation, association, person, or party shall willfully do or cause to be done, or shall willfully suffer or permit to be done, any act, matter, or

thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause or willfully suffer or permit any act, matter, or thing so directed or required by this act to be done, not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined in any sum not exceeding one thousand dollars (\$1,000), or imprisonment in the jail of the county not exceeding six (6) months, or both, in the discretion of the court, and shall, moreover, be liable to the suit of the party injured or damaged.

## Part Second. Criminal Procedure.

### CHAPTER XXIV.

#### Definitions.

Sec. 5878. The term "person" includes corporations.

§ 5878. Whenever any property or interest is intended to be protected by a provision of the penal law, and the general term "person" or any other general term is used to designate the party whose property is intended to be protected, the provisions of such penal laws and the protection thereby given shall extend to the property of \* \* \* all private corporations.

[In an information for larceny of property belonging to a corporation, an amendment showing that corporation is organized under laws of the State is unnecessary. *Braithwaite v. State*, 28 Neb. 836; s. c., 45 N. W. Rep. 247.]

On the trial of such case it is necessary to prove only the de facto existence of the corporation; articles of association or charter need not be introduced. *Id.*

On information for forgery of bank draft it need not be alleged that bank which draws the draft is a corporation. *Roush v. State*, 34 Neb. 327; s. c., 51 N. W. Rep. 755.]

## LEGISLATIVE ACTS RELATING TO CORPORATIONS ENACTED SUBSEQUENTLY TO 1890.

1. To regulate hours of labor.
2. Relating to filing articles of incorporation.
3. To prohibit corporations from contributing money for election purposes.
4. Prescribing fees of secretary of State.
5. To prohibit and punish trusts and conspiracies.
6. Providing for sale of stock upon execution.

### Act 1.

(L. 1891, ch. 54.)

AN ACT to regulate the hours of labor of mechanics, servants, and laborers.

Be it enacted by the legislature of the State of Nebraska:

Section 1. That eight hours shall constitute a legal day's work for all classes of mechan-

ics, servants, and laborers throughout the State of Nebraska, excepting those engaged in farm or domestic labor.

§ 2. Any officer or officers, agent or agents of the State of Nebraska, or any municipality therein, who shall openly violate or otherwise evade the provisions of this act shall be deemed guilty of malfeasance in office, and be suspended or removed accordingly by the governor or head of the department to which such officer is attached.

§ 3. Any employer or corporation working their employes over the time specified in this act shall pay as extra compensation double the amount per hour as paid for previous hour.

Articles of incorporation; political contributions — Acts, 1897, chs. 18, 19, 72.

§ 4. Any party or parties contracting with the State of Nebraska, or any such corporation or private employer, who shall fail to comply with or secretly evade the provisions hereof by exacting or requiring more hours of labor for the compensation agreed to be paid per day than is herein fixed and provided for shall, on conviction thereof, be deemed guilty of a misdemeanor, and be punished by a fine of not less than one hundred (\$100) dollars nor more than one thousand (\$1,000) dollars. And all acts or parts of acts inconsistent with this act are hereby repealed.

(Approved April 7, 1891.)

#### Act 2.

(L. 1897, ch. 18.)

AN ACT to amend section 126 of chapter 16, of the Compiled Statutes of Nebraska of 1895, and to repeal said section and section 127 of said act as now existing.

Be it enacted by the legislature of the State of Nebraska:

Section 1. That section 126 of chapter 16 of the Compiled Statutes of Nebraska of 1895, be amended to read as follows: Section 126. Every corporation, previous to the commencement of any business, except its own organization, when the same is not formed by legislative enactment, must adopt articles of incorporation and have them filed in the office of the secretary of State and recorded in a book kept for that purpose, and domestic corporations must also file with the county clerk, in the county where their headquarters are located, except mutual insurance companies, building and loan companies, loan and investment companies and banking institutions, which shall be filed with the State auditor and State banking board. All mutual insurance companies, building and loan companies and loan and investment companies required by law to file articles with the State auditor shall file a certificate with the secretary of State, stating the date of filing with the auditor, name and place of business and names of stockholders. Banking organizations incorporated under the laws of this State, that have been approved by the State banking board and that have filed articles of incorporation with said board shall file a certificate in the office of the secretary of State, stating the date of filing articles with said board, name and place of business and names of stockholders. Provided, That this act shall not apply to mutual fraternal benefit societies or associations.

§ 2. That sections 126 and 127, of chapter 16, of the Compiled Statutes of Nebraska of 1895, are repealed.

§ 3. Whereas, an emergency exists, this act shall take effect and be in force from and after its passage.

This act repeals section 339 of the Statutes of 1891.

#### Act 3.

(L. 1897, ch. 19.)

AN ACT to prohibit corporations from contributing money or means to influence or control electors and to punish a violation of the law.

Be it enacted by the legislature of the State of Nebraska:

Section 1. That it shall be unlawful and a misdemeanor for any corporation organized under the laws of the State of Nebraska, or any corporation organized under the laws of any other State, or territory, or under the laws of the United States, or under the laws of any other nation, and doing business in the State of Nebraska, to give or contribute money, property, transportation, help or assistance in any manner or form to any political party, or to any candidate for any civil office, or to any political organization, or committee, or to any individual to be used or expended for political purposes.

§ 2. Any corporation violating any of the provisions of this act shall forfeit and pay a fine of \$1,000 for the first offense.

§ 3. Upon conviction of a second or subsequent offense shall forfeit and pay a fine of \$2,000, and the court shall decree the charter of said corporation canceled and set aside or if chartered in another State or territory or under the laws of the United States or of any other nation, and doing business in this State, it shall pay a like fine for such offense and forfeit its right to do business in this State, and it is hereby made the duty of the attorney-general to proceed against the same. All fines recovered under any of the provisions of this act, shall, when collected, be paid into the proper treasury of the county for the use of the school fund, and the corporate authorities of any county within whose territorial jurisdiction such fine was recovered, and collected, shall pay to the complaining witness in such prosecution, out of the general fund of such county, an amount equal to one-fourth of the fine actually collected, upon the proper application of the party entitled to the same, in the manner usual for the presentation of claims against counties.

§ 4. Whereas, an emergency exists, this act shall take effect and be in force from and after the date of its passage.

#### Act 4.

(L. 1897, ch. 72.)

AN ACT to amend section 3 of article 2, chapter 83, of the Compiled Statutes of 1895, regulating the fees of the office of the secretary of State, and to repeal said section as now existing.

Be it enacted by the legislature of the State of Nebraska:

Section 1. That section 3, of article 2, of chapter 83, of the Compiled Statutes of 1895



## Trusts and conspiracies against trade — Act, 1897, ch. 79.

be and the same is hereby amended so as to read as follows:

§ 3. There shall be paid to the secretary of State the following fees: For certificate with seal, fifty cents; \* \* \* for filing articles of association, incorporation, or consolidation, domestic or foreign, ten dollars, and if the capital stock authorized by such articles exceeds the sum of one hundred thousand dollars, an additional filing charge of ten cents for each one thousand dollars of stock authorized in excess of one hundred thousand dollars; and he shall also charge for recording such articles ten cents for each one hundred words contained therein; \* \* \* for filing certificate of increase of capital stock of any corporation, association or consolidation, domestic or foreign \$5.00, and ten cents for each \$1,000 of the capital stock authorized by such articles of incorporation, association or consolidation in excess of the amount of capital stock originally authorized, and ten cents for each one hundred words, for recording; for filing certificate of decrease of capital stock \$5.00; for filing articles of decree of court, changing the name of any corporation or association, \$5.00; for filing amendment or articles of incorporation, \$5.00; \* \* \* Provided, That all fees provided for herein, shall be paid to the State treasurer before the services therefor are performed.

§ 2. Section 3, of article 2, of chapter 83 of the Compiled Statutes of 1895, as the same now exists, be and the same hereby is repealed.

§ 3. Whereas, an emergency exists, therefore this act shall take effect and be in force from and after the date of approval by the governor.

## Act 5.

(L. 1897, ch. 79.)

AN ACT to define trusts and conspiracies against trade and business, declaring the same unlawful and void, and providing means for the suppression of the same, and remedies for persons injured thereby, and to provide punishment for violations of this act, and to repeal chapter ninety-one-a (91a), entitled "Trusts," of the Compiled Statutes of Nebraska for the year 1895.\*

Be it enacted by the legislature of the State of Nebraska:

Section 1. That a trust is a combination of capital, skill or acts by any person or persons to fix the price of any article or commodity of trade, use or merchandise, with the intent to prevent others from conducting or carrying on the same

business or selling or trafficking in the same article, use or merchandise, or a combination of capital, skill or acts by two or more persons or by two or more of them for either, any or all of the following purposes: 1. To create or carry out restrictions in trade. 2. To limit or reduce the production or increase or reduce the price of merchandise or commodities. 3. To prevent competition in insurance, either life, fire, accident or any other kind, or in manufacture, making, constructing, transportation, sale or purchase of merchandise, produce or commodities. 4. To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established upon any article of merchandise, produce or manufacture of any kind intended for sale, use or consumption in this State; to establish any pretended agency whereby the sale of any such article, commodity, merchandise or product shall be covered up, concealed or made to appear to be for the original vendor, for a like purpose or purposes, and to enable such original vendor, producer or manufacturer to control the wholesale or retail price of any such article of merchandise, produce or commodity after the title to the same shall have passed from such vendor or manufacturer. 5. To make or enter into, carry on or carry out any contract, obligation or agreement of any kind or description by which they shall bind, or have heretofore bound themselves not to sell, dispose of, traffic in or transport any article of merchandise, or commodity, or article of trade, product, use, merchandise, consumption or commerce, below a common standard figure, card or list price, or by which they shall agree in any manner to keep the price of such article, product, commodity or transportation, at a fixed or graduated figure or price, or by which they shall in any manner establish or settle the price of any article of merchandise, commodity, or of insurance, fire, life or accident, or transportation between them or between themselves and others, or with the intent to preclude, or the tendency of which is to prevent or preclude a free and unrestricted competition among themselves or others or the people generally in the production, sale, traffic or transportation of any such article of merchandise, product or commodity or conducting a like business or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale, production or transportation of any such article of merchandise, product or commodity or the carrying on of any such business, that its price might in any manner be affected thereby.

§ 2. That any and all acts by any person or persons carrying on, creating, or attempting to create, either directly or indirectly, a trust as defined in section one (1) of this act, are hereby declared to be a conspiracy against trade and business and unlawful,

\* Chapter 52 of the Statutes of 1891.

and any person who may be or may become engaged in any such conspiracy, or take part therein, or aid or advise, in its commission, or who shall as principal, manager, director, agent, servant or employe, or in any other capacity knowingly aid or advise, or attempt to carry out, or carry out any of the stipulations, purposes, prices, rates, orders thereunder, or in pursuance thereof shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars, nor more than five thousand dollars.

§ 3. That any corporation organized under the laws of this State which violates any of the provisions of this act shall thereby forfeit its charter and franchise, and its corporate existence shall thereupon cease and determine. And for a violation of any of the provisions of this act by any corporation it shall be the duty of the attorney-general of the State, or county attorney, within his county upon his own motion, to institute suit or quo warranto proceedings in any county in this State in which such corporation was organized or is engaged in transacting business for the forfeiture of its charter rights and franchise and the dissolution of its corporate existence. There shall be taxed against the defendant as part of the cost in any such suit or proceedings, upon the forfeiture of its charter and franchise as provided herein, a fee for the services rendered by the county attorney a sum not less than one hundred dollars (\$100), and not more than five hundred dollars (\$500), to be fixed by the court rendering the judgment.

§ 4. Every foreign corporation or person not a resident of this State, violating any of the provisions of this act, is hereby denied the right and prohibited from doing any business within this State; and it shall be the duty of the attorney-general and each county attorney within his county, to enforce this provision by injunction, or other proper proceedings, in any county in which such foreign corporation or non-resident person does business, in the name of the State on his relation. And for services rendered by the county attorney, in any such suit or proceedings, the court rendering judgment, shall allow a reasonable sum to be taxed against the defendant as part of the costs, in case judgment is rendered against the defendant. For the purpose of obtaining service upon any foreign corporation or non-resident person in any suit or proceedings brought as provided in this act, it shall be sufficient to serve a summons upon any person in any county within the State who may be the agent of said foreign corporation or non-resident person, for the purpose of soliciting business or transacting or doing business for said corporation or non-resident person, at the time when summons is issued upon petition filed against said corporation,

or non-resident person, or when summons is served on such agent.

§ 5. In any indictment or information for any offense named in this act it shall be sufficient to state the purposes and effects of the trust or combination in a general way, and that the accused was a member of, aided or advised, or acted with or in pursuance of such trust or combination, without giving its name or description, or how, where or when it was created.

§ 6. In prosecutions under this act it shall be sufficient to prove that a trust or combination, as defined herein or under the common law, exists, and that the defendant belonged to it or acted for or in connection with it, or aided or advised such trust or combination, or attempted to, or did fully carry out any of the stipulations, purposes, prices, rates or orders of any person connected therewith, and it shall not be necessary to make any proof of all the members belonging to such trust, combination or conspiracy, or to prove or produce any article of agreement or any written instrument on which it may have been based, or when, where or how such trust, combination or conspiracy was formed, or that it was evidenced by any written instrument, or came into existence by any agreement of any kind or character, whether in parol or written.

§ 7. Prosecutions may be brought by any person in the name of the State of Nebraska against any person or persons violating any of the provisions of this act, and it shall be the duty of all county attorneys in their respective counties, to prosecute all criminal suits on behalf of the State arising under the provisions of this act, and there shall be taxed by the court upon conviction of the defendant or defendants, a fee for the county attorney of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) as services for trying said suit, and same shall be taxed as part of the costs against the defendant or defendants.

§ 8. That any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

§ 9. Nothing herein contained shall be construed to prevent any assemblies or associations of laboring men from passing and adopting such regulations as they may think proper, in reference to wages and the compensation of labor, and such assemblies and associations shall retain, and there is hereby reserved to them all the rights and privileges now accorded to them by law, anything herein contained to the contrary notwithstanding.

§ 10. Any purchaser of any article, commodity, matter or thing purchased or contracted for within or without this State from any person, firm, corporation or association of persons, or of two or more of them, transacting business contrary to any provision of

Trusts and conspiracies; execution against stock — Acts, 1897, chs. 79, 90.

the preceding sections of this act, shall not be liable for the price or payment of such article, commodity, matter or thing, and may plead this act as a defense to any suit for such price or payment.

§ 11. Any person who shall be injured in his business, employment or property by any other person, firm, association or corporation by reason of anything forbidden or declared to be unlawful by this act, may have his right of action and sue therefor in any court of competent jurisdiction, and he shall recover the damages by him sustained, and the costs of suit together with a reasonably attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

§ 12. In any action brought under any of the provisions of this act the court before whom the same shall be pending may compel any person or persons, partnership, company, association or corporation so proceeded against, or any of the members of any such partnership or corporation, or any director, officer, receiver, trustee, agent, employe or clerk of them, or either of them, to attend, appear and testify in such suit or proceeding, and may compel the production of the books and papers of any such person, persons, partnership, company, association or corporation party to any such proceeding.

No person shall be excused from attending and testifying, or producing books and papers, in any prosecution under this act, for the reason that the testimony, documentary or otherwise, required of him may tend to criminate him, or subject him to a penalty or forfeiture, but no person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, in any prosecution under the provisions of this act. Provided, That no person so testifying shall be exempt from prosecution for perjury committed in so testifying.

§ 13. That the word "person" or "persons" wherever used in this act shall be deemed to include firm, firms, corporation, corporations, partnerships, copartnerships and associations existing under, permitted or authorized by the laws of the United

States, this State or any other State, or the laws of any foreign country or territory of the United States.

§ 14. That chapter ninety-one a (91a), entitled "Trusts," of the Compiled Statutes of Nebraska for the year 1895,\* be and the same is hereby repealed.

Combinations of grain dealers prohibited.  
§§ 5850-5852.

[Unlawful acts of a corporation are not limited to those which are mala prohibita and malum in se, but include powers which the corporation is not authorized to exercise, and contracts which it is not empowered to make. *State v. Distilling Co.*, 29 Neb. 700; s. c., 46 N. W. Rep. 155.

A contract in total restraint of trade, which tends to prevent competition in an article of commerce and create a monopoly therein, is null and void, and a like rule applies to conveyances executed for a like use. Being an unlawful purpose, they are, therefore, ultra vires. *Id.*]

## Act 6.

(L. 1897, ch. 90.)

AN ACT providing for the sale upon execution of stock in corporations and designating the manner of levy thereupon under executions and writs of attachments.

Be it enacted by the legislature of the State of Nebraska:

Section 1. Stock in corporations owned by the judgment debtor, or the defendant in attachment proceedings, may be levied upon under executions or writs of attachment, and the mode of levy shall be as follows:

§ 2. Stock in a corporation shall be levied upon by notifying in writing the president, vice-president, secretary, cashier, or other managing agent at the usual place of business of said corporation, that the stock has been levied upon under the writ held by the officer.

§ 3. Whereas an emergency exists so requiring, therefore this act shall take effect and be in force from and after its passage.

Attachment. See §§ 4708, 4710.

\*Chapter 52 of the Statutes of 1891.



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NEVADA.

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# NEVADA.

## CONSTITUTION OF NEVADA—1864.

### ARTICLE I.

#### Declarations of Rights.

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### ARTICLE VIII.

#### Corporations.

- Sec. 1. Corporations must be formed under general laws, which may be altered or repealed.  
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5. Corporations may sue and be sued.  
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7. No right of way shall be appropriated without compensation.  
9. Credit of State not to be loaned to business corporations.  
10. No county, town or municipality shall become a stockholder.

### ARTICLE I.

#### Declaration of Rights.

§ 8. No person shall, etc., \* \* \* nor shall private property be taken for public use without just compensation having been first made or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.

See art. VIII, § 7. Right of eminent domain extended to foreign corporations. § 2656.

§ 15. No \* \* \* law impairing the obligation of contracts, shall ever be passed.

General corporation laws may be repealed. Art. VIII, § 1. Vested rights not to be impaired. § 833.

### ARTICLE VIII.

#### Corporations.

Section 1. The legislature shall pass no special act in any manner relating to corporate powers, except for municipal purposes; but corporations may be formed under general laws; and all such laws may, from time to time, be altered or repealed.

See §§ 802 et seq.

§ 2. All real property and possessory rights to the same, as well as personal property in

this State, belonging to corporations now existing or hereafter created, shall be subject to taxation the same as property of individuals; Provided, That the property of corporations formed for municipal, charitable, religious, or educational purposes may be exempted by law.

See § 1086. See Act of 1891, at p. 19.

§ 3. Dues from corporations shall be secured by such means as may be prescribed by law; Provided, That corporators in corporations formed under the laws of this State shall not be individually liable for the debts or liabilities of such corporations.

§ 4. Corporations created by or under the laws of the territory of Nevada shall be subject to the provisions of such laws until the legislature shall pass laws regulating the same, in pursuance of the provisions of this Constitution.

§ 5. Corporations may sue and be sued in all courts, in like manner as individuals.

See § 805 (1), note. See also §§ 3139 et seq.

§ 6. No bank notes or paper of any kind shall ever be permitted to circulate as money in this State, except the federal currency and the notes of banks authorized under the laws of congress.

See §§ 802, 816.

§ 7. No right of way shall be appropriated to the use of any corporation until full compensation be first made or secured therefor.

See art. I, § 8. Right of eminent domain extended to foreign corporations. § 2656.

§ 9. The State shall not donate or loan money or its credit, subscribe to or be interested in the stock of any company, association, or corporation, except corporations formed for educational or charitable purposes.

§ 10. No county, city, town, or other municipal corporation shall become a stockholder in any joint-stock company, corporation, or association whatever, or loan its credit in aid of any such company, corporation, or association, except railroad corporations, companies, or associations.

[To allow a county to loan its credit to a corporation is virtually allowing a donation. *Gibson v. Mason*, 5 Nev. 284.]

## GENERAL STATUTES OF NEVADA — 1885.

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## Corporations.

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§ 802. Corporations for manufacturing, mining, milling, ditching, mechanical, chemical, building, navigation, transportation, farming, banking, hotel and inn-keeping and ore reduction purposes, or for the purpose of engaging in any other species of trade, business or commerce, foreign or domestic, may be formed according to the provisions of this act, such corporations and the members thereof being subject to all the conditions and liabilities herein imposed, and to

none others: Provided, That nothing in this section shall be so construed as to authorize the formation of banking corporations for the purpose of issuing or circulating money or currency within this State, except the federal currency and the notes of banks authorized under the laws of the congress of the United States; nor shall bank notes or paper of any kind be permitted to circulate as money in this State, other than the federal currency and the notes of banks authorized by the laws of the congress of the United States.

(As amended, Stats. 1869, 95.)

See Const., art. VIII, § 1. Circulation of bank notes and paper prohibited. Const., art. VIII, § 6, and Statutes, § 816. Previous acts of formation of corporations repealed. See § 828. But see, also, §§ 830, 831.

[National bank, having its location in Nevada, is a citizen of the State of Nevada. *Davis v. Cook*, 9 Nev. 134; *Quigley v. R. R. Co.*, 11 id. 350; s. c., 8 Am. Corp. Cas. 343.

It is well settled that a corporation is a citizen of the State where it is created. *Id.* And can be a "citizen of another State." *Id.*]

§ 803. Any three or more persons who may desire to form a company for any one or more of the purposes specified in the preceding section, may make, sign and acknowledge, before some person competent to take the acknowledgment of deeds, and file and have recorded in a book provided for that purpose, in the office of the clerk of the county in which the principal place of business of the company is intended to be located, and a certified copy, under the hand of the clerk and the seal of the court of said county, in the office of the secretary of State, a certificate, in which shall be stated the corporate name of the company, the object for which the same shall be formed, the amount of its capital stock, the time of its existence — not to exceed fifty years — the number of shares of which the capital stock shall consist, the number of trustees and their names, who shall manage the concerns of the company for the first six months, and the name of the city, town or locality and county in which the principal place of business of the company is to be located.

Increasing capital stock. See §§ 820, 821. Dissolution. § 823. Changing principal place of business. § 824. De facto corporations made de jure. §§ 832, 833. Requirements of foreign corporation doing business in State. §§ 1073, 1074.

[A "corporator," within meaning of Bankrupt Act, is one of the constituents or stockholders of the corporation. In re *Lady Bryan Co.*, 1 Saw. 349.



## Certificate as evidence; corporate powers — Stats., §§ 804, 805.

A contract may be created by articles of incorporation, and corporation may be liable to a stockholder for failure to perform its duty. *O'Connor v. Ditch Co.*, 17 Nev. 245; s. c., 30 Pac. Rep. 882. So held where injury was occasioned by other stockholders. *Id.*

Certificate of incorporation is made for benefit of public, not for corporation or stockholders, and incorporators cannot, as against creditors of corporation, contradict their own certificate. *Thompson v. Lake*, 19 Nev. 103; s. c., 7 Pac. Rep. 68. And party signing certificate as subscriber to stock cannot afterward, as against creditors, deny such subscription. *Id.*

§ 804. A copy of any certificate of incorporation, filed in pursuance of this act, and certified by the county clerk of the county in which it is filed, or his deputy, or by the secretary of State, shall be received in all the courts and places as prima facie evidence of the facts therein stated.

§ 805. When the certificates shall have been filed, the persons who shall have signed and acknowledged the same, and their successors, shall be a body corporate and politic, in fact and in name, by the name stated in their certificate, and by their corporate name have succession for the period limited, and power:

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See Const., art. VIII, § 5. Copy of articles is evidence. § 804. Trustees of dissolved corporation may sue. § 822. Service of process. §§ 3051, 3052, 3540. Injunction. § 3139. Attachment. §§ 3149, 3150. Costs required of foreign corporation. §§ 3510 et seq. Proceedings in quo warranto. §§ 3711 et seq.

[Assumption of old debts by new corporation will enable creditors to maintain assumption against corporation. *Paxton v. M. & M. Co.*, 2 Nev. 257. Corporation not liable for prior indebtedness of a portion of stockholders, when. *Id.*

Foreign corporation within exception of statute of limitations as to persons absent from State when cause of action accrues. *Robinson v. Imperial S. M. Co.*, 5 Nev. 45; *State v. R. R. Co.*, 10 id. 48; *Barstow v. Union, etc., Co.*, id. 386.

The court has jurisdiction to determine rights of individuals within its jurisdiction, each claiming under a foreign corporation, although it may have no jurisdiction of the corporation itself. *Curtis v. McCullough*, 3 Nev. 202.

Stockholder or creditor cannot maintain suit for injury to corporate rights, unless the corporation refused to take proper measures to protect or redress the same. *Newby v. R. R. Co.*, 1 Saw. 64.

Owner of corporation bonds has same right as a stockholder to maintain suit to protect corporate rights. *Id.*

Corporation not liable to stockholders or creditors for an error of judgment in choosing between legal remedies deemed equally effective. *Id.*

Register in bankruptcy acquires no jurisdiction over corporation, when. In re *Lady Bryan Co.*, 1 Saw. 349.

Trustees cannot authorize filing of petition in bankruptcy. Vote of majority of corporators required. *Id.* And subsequent ratification by corporators after adjudication does not cure this defect of want of jurisdiction. *Id.*

Incapacity of corporation to hold property no defense to an action by it for trespass. *Cole, etc., Co. v. Virginia, etc., Co.*, 1 Saw. 470.

Same proportion of creditors must join in petition in bankruptcy against a corporation as against individuals. In re *Oregon, etc., Co.*, 3 Saw. 614. And such petition must allege the character of the corporation. *Id.*

Suing wrong corporation. Complaint cannot be amended after wrong corporation has appeared and answered. *Little v. Virginia, etc., Co.*, 9 Nev. 317.

In action on note and mortgage, where corporation incidentally made a party, not necessary to allege whether foreign or domestic, nor for what purpose incorporated. *Crow v. Van Sickle*, 6 Nev. 146.

Power of corporation to make affidavit for removal of cause to another jurisdiction discussed. *Quigley v. R. R. Co.*, 11 Nev. 350.

The fact that corporation is organized under United States laws not enough, of itself, to give United States circuit court jurisdiction. *Magee v. R. R. Co.*, 2 Saw. 447.

Where a complaint avers that the action was commenced by a minority of the stockholders "by express consent, direction and authority of the corporation," it is not demurrable. *Mining Co. v. Ross*, 20 Nev. 127; s. c., 18 Pac. Rep. 358.

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Corporation may be held liable for malicious prosecution. *Ricord v. R. R. Co.*, 15 Nev. 167.

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Second. To make and use a common seal, and to alter the same at pleasure.

Counterfeiting seal, penalty. § 4647.

[Presumption of authority to affix corporate seal. Burden of proof upon party alleging the want of authority. *Evans v. Lee*, 11 Nev. 194.

Corporation cannot execute a deed otherwise than under its seal. In re *St. Helen Mill Co.*, 3 Saw. 88. And a lien by way of mortgage can only be created by a deed under seal. *Id.*

Third. To appoint such officers, agents, and servants as the business of the corporation shall require, to define their powers, prescribe their duties, and fix their compensation.

Trustees. § 806, and note. Agents of foreign corporation. See §§ 1073, 1074. Directors. § 806, and note.

[Stockholders' meeting has no authority to elect a president and secretary of the corporation. In re *St. Helen M. Co.*, 3 Saw. 88.

Meeting of stockholders without notice is invalid. *Id.*

Unauthorized lease of mining property by president, when not to be considered as ratified by corporation. *Yellow Jacket S. M. Co. v. Stevenson*, 5 Nev. 225; *Hillyer v. Overman S. M. Co.*, 6 id. 51; *Lonkey v. Succor M. & M. Co.*, 10 id. 17. What knowledge on the part of corporation it is necessary to show to establish ratification of unauthorized act of president. *Yellow Jacket S. M. Co. v. Stevenson*, supra.

## Corporate powers — Stats., §§ 805, 806.

Where by-laws provide that meetings of stockholders shall be called by the trustees, president has no authority to call such a meeting. *Guerreiro v. Pettinelli*, 10 Nev. 141; s. c., 5 Am. Corp. Cas. 516.

Officers of a corporation are not recognized as such in a state in which the corporation does not exist. But a foreign corporation may have agents in any State. *Curtis v. McCullough*, 3 Nev. 202.

Officers who cannot bind the company by contract directly cannot do so indirectly or by misrepresentation. *Hillyer v. Overman S. M. Co.*, 6 Nev. 51; *Yellow Jacket S. M. Co. v. Stevenson*, 5 id. 224.

Privity or knowledge of the managing officers is privity or knowledge on the part of the corporation itself. *Lord v. Goodall*, 4 Saw. 292.

What is necessary to make corporation liable on contracts made by officers or agents. *Edwards v. Water Co.*, 21 Nev. 469; s. c., 34 Pac. Rep. 381.

The implied, incidental powers of a corporation are not to be lightly inferred as existing in its officers. Id. To constitute a ratification, by corporation, of unauthorized acts of agents, every detail of the transaction must be made known to principal. Id. When affirmative authority from trustees is necessary to authorize officers to execute a note, the same character of authority is required to enable them to renew it. Id.

Stockholders not assenting thereto will not be bound by any custom adopted and pursued by officers of corporation in contravention of its articles of incorporation. *O'Connor v. Ditch Co.*, 17 Nev. 245; s. c., 30 Pac. Rep. 882; s. c., 9 Am. Corp. Cas. 542.

When president of a corporation may execute a deed and donate lands to a county. *State v. Glenn*, 18 Nev. 35; s. c., 1 Pac. Rep. 186.

Foreman of mining corporation not entitled to wages when absent on jury duty. *Martin v. Mining Co.*, 18 Nev. 303; s. c., 3 Pac. Rep. 488.

Authority of president of corporation discussed. *Steel v. Mining Co.*, 13 Nev. 486.

Declarations of agent of corporation admissible, when. *Sacalaris v. R. R. Co.*, 18 Nev. 155; s. c., 1 Pac. Rep. 835.]

Fourth. To require of them such security as may be thought proper for the fulfillment of their duties, and to remove them at will, except that no trustee shall be removed from office unless by a vote of a majority of the stockholders, as hereinafter provided.

See § 806.

[When trustees cease to be officers. *Ditch Co. v. Water Co.*, 17 Nev. 166; s. c., 30 Pac. Rep. 695; s. c., 9 Am. Corp. Cas. 537.]

Fifth. To purchase, hold, sell, and convey such real and personal estate as the purposes of the corporation shall require.

Foreign corporation may hold land. § 2655. Private property not to be taken without compensation. Const., art. I, § 8; art. VIII, § 7.

[Corporation cannot make a deed unless the directors meet as a board and so determine; and the only evidence of such meeting and action is the "record," kept by the secretary. In re St. Helen M. Co., 3 Saw. 88.

A corporation formed in California may hold land in this State. *Whitman, etc., Co. v. Baker*, 3 Nev. 386. Question whether such corporation could hold more land than is allowed to be held by a Nevada corporation discussed. Id.

President of corporation may execute deed and donate lands to a county. *State v. Glenn*, 18 Nev. 35; s. c., 1 Pac. Rep. 186.]

Sixth. To make by-laws not inconsistent with the Constitution of this State, or Constitution of the United States.

[A by-law contrary to charter is void. *Corey v. Curtis*, 9 Nev. 325.

Adoption of by-laws by long use. Id.

If so authorized by charter, corporation may make by-laws regulating and limiting transfers of stock. *Pendergast v. Bank*, 2 Saw. 108.]

Seventh. The management of its property, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company, as expressed in its articles of incorporation.

Transfer of stock. § 810.

[Corporation, like an individual, may be bound upon an implied contract, provided it be within the scope of its corporate authority. *Tucker v. Virginia City*, 4 Nev. 20.

Acceptance of treasury notes on gold coin contracts is a complete satisfaction of the debt. *Gilman v. Douglass Co.*, 6 Nev. 27.

Contract by mining corporation for construction of tunnel to drain mine is not ultra vires. *Tunnel Co. v. Mining Co.*, 19 Nev. 121; s. c., 7 Pac. Rep. 271.

Sale of stock, not void, when. *Marshall v. Golden Fleece Co.*, 16 Nev. 156.

Transfer of certificates of mining stock; when true owner is estopped from arresting title. *Gass v. Hampton*, 16 Nev. 185.]

Every corporation in this State shall have the power, whenever at any assessment sale of the stock of said corporation no person will take the stock and pay the assessment thereon, to purchase such stock and hold the same for the benefit of the corporation. All purchases of its own stock by any corporation in this State which have been previously made at assessment sales whereat outside parties have failed to bid, and which purchases were for the amount of assessments due, and costs or otherwise, shall be held valid, and as vesting the legal title to the same in said corporation. The stock so purchased shall be held subject to the control of the remaining stockholders, who may make such disposition of the same as they deem fit. Whenever any portion of the capital stock of any corporation is held by the said incorporation by purchase, a majority of the remaining shares of stock in said incorporation shall be held to be a majority of the shares of the stock in said incorporated company, for all purposes of election or voting on any question before a stockholders' meeting.

[Corporation having issued full number of authorized shares, no court can rightfully direct the issuance of other shares unless some of those issued were void. *Smith v. U. A. M. Co.*, 1 Nev. 423. A mistake in the issuance of stock may be corrected by a court of equity by proper decree, but not so as to injure an innocent purchaser. Id.]

§ 806. The corporate powers of the corporation shall be exercised by a board of not



## Board of trustees; election; removal of officers — Stats., § 806.

less than three trustees — who shall be stockholders in the company — who shall, before entering upon the duties of their office respectively, take and subscribe to an oath, as prescribed by the laws of this State, and who shall, after the expiration of the term of the trustees first elected, be annually elected by the stockholders, at such times and place within the State, and upon such notice, and in such manner as shall be directed by the by-laws of the company; but all elections shall be by ballot, and every stockholder shall have the right to vote in person or by proxy, the number of shares owned by him for as many persons as there are trustees to be elected, or to cumulate said shares and give one candidate as many votes as the number of trustees multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit, and such trustees shall not be elected in any other manner; and the person or persons receiving the greatest number of votes shall be trustee or trustees. Whenever any vacancy shall happen among the trustees by death, resignation, or otherwise, except by removal and the election of his successor, as herein provided, it shall be filled by appointment of the board of trustees. On petition of the stockholders holding the majority of the stock actually issued by any corporation formed under this act, to the district judge of the district where said corporation has its actual place of business, verified by the signers, to the effect that they are severally the holders of to the number of shares set opposite their signatures to the foregoing petition, the district judge shall issue his notice to the stockholders of said company that a meeting of the stockholders will be held at the courtroom of the district court, in the county in which is said principal place of business, stating the time, not less than five nor more than ten days after the first publication of said notice, and the object to be taken into consideration, the removal of officers of said company, which notice, signed by said district judge, shall be published daily, in a daily newspaper published in said county, for at least five days before the time for the meeting, or if there be no daily newspaper published in said county, then in such manner as the district judge shall direct. At the time appointed by said notice the said district judge shall appoint a secretary of the meeting, and shall thereupon hear the proofs of those claiming to be stockholders in said corporation, and only those showing a right to vote, or their proxies, shall take part in the further proceedings. Said judge shall decide who are entitled to vote, in a summary way, and his decision shall be final. If it appears at the time appointed, or within one hour thereafter, holders of less than one-half the whole number of shares actually issued, or their proxies, are present the

meeting shall be dissolved; but if the holders of more than one-half of the shares actually issued, or their proxies, are present they shall proceed to vote, the secretary calling the roll, which he shall prepare by setting down the names of persons held to be entitled to vote, and the number of shares held by each, and such persons voting yea or nay, as the case may be. The secretary shall enter the same upon his list, and when he has added up the list and stated the result he shall sign the same and hand it to the judge, who shall declare the result. If the result of the vote is that the holders of a majority of all the shares of the company actually issued, or their proxies, are in favor of the removal of one or more of the officers of the company, the meeting shall then proceed to ballot for officers to supply the vacancies thus created. Tellers shall be appointed by the judge, who shall collect the ballots and deliver them to the secretary, who shall count the same in open session, and, having stated the result of the count in writing, shall sign the same and hand it to the judge, who shall announce the result of the meeting. The judge shall thereupon issue to each person chosen a certificate stating that from the date of such meeting until the next annual election, unless removed under the provisions hereof, he is entitled to exercise and fill the office to which he is chosen, and shall indorse upon or annex to said petition a report of the proceedings of said meeting, and an order requiring that all books, papers, and all property and effects of said corporation be immediately delivered to the officers elect, and shall sign the same and file it with the clerk of his court, and thereafter any disobedience to said order may be punished as other contempts of court, and obedience thereto may be enforced by the court of said district. The district judge shall preside at said meeting and put to vote such proper motions as he may be requested to submit to the meeting. In deciding any controverted question that may arise, he shall have the power to administer oaths and take testimony, either orally or ex parte affidavits. For all the services in these proceedings the county clerk shall receive twenty dollars.

(As amended, Stats. 1875, 6S; 1881, 34.)

Duties of trustees. See §§ 822, 827. Personal liability. See § 814. Executors, guardians, etc., may vote stock. § 812.

[Under laws of California the manner of electing trustees of mining corporation may be regulated by the by-laws; but the substance must be in conformity with the statute. *Corey v. Curtis*, 9 Nev. 325; s. c., 5 Am. Corp. Cas. 509. Such election is a corporate act and must be exercised as required by the charter. *Id.* No legal election of trustees, when. *Guerrero v. Pettibell*, 10 Nev. 141; s. c., 5 Am. Corp. Cas. 516.

When law requires annual election of trustees, the election must take place substantially every twelve calendar months. *Curtis v. McCullough*, 3 Nev. 202. Duties of trustees. *Id.*



## Election of trustees; first meeting of board; transfers; by-laws — Stats., §§ 807-811.

Term of first board of trustees. State ex rel. Flagg v. Lady B. M. Co., 4 Nev. 400. Discretion of trustees as to time of election. Id. Substituted trustees do not make new board. Annual election for new board must be held as provided by law, same as if there had been no changes. Id.

Demand for annual election of trustees, upon whom served. State v. Wright, 10 Nev. 167. The legal right to have an annual election of trustees belongs to any stockholder, independent of the number of shares of stock he owns. Id.

Trustees can only bind corporation when they are together as a board, acting as such. Hillyer v. Overman S. M. Co., 6 Nev. 51.

Trustee will not be held individually liable for unauthorized act of other trustees, of which he was ignorant, unless he afterward ratifies it. Edwards v. Water Co., 21 Nev. 469; s. c., 34 Pac. Rep. 381.

When corporation not bound by acts of directors. Ricord v. R. R. Co., 15 Nev. 167.

Directors may perform acts outside of State. Bassett v. Mining Co., 15 Nev. 293. And may execute a deed of trust to himself. Id.

Bonds issued to directors not void, and a third party, who cannot pretend to have been injured thereby, will not be heard to complain of it. Id.]

§ 807. If it shall happen, at any time, that an election of trustees shall not be had on the day designated by the by-laws of the company, the corporation shall not for that reason be dissolved, but it shall be lawful, on any other day, to hold an election for trustees, in such manner as shall be provided for in the by-laws of the company, and all acts of the trustees shall be valid and binding on the company until their successors shall be elected. Whenever a majority of any newly elected board of trustees shall fail to qualify and file in the office of the company their oath of office, within thirty days from the day of their election, it shall be the duty, of any officer of the company upon the request of owners in said company representing not less than one-third of the capital stock of the corporation owned in the company, to call a meeting of the stockholders of said company, which meeting, when assembled, shall have power to elect trustees to supply the place of those who have failed to qualify; but such trustees may qualify and enter upon the duties of their office at any time after the said thirty days, if such meeting for a new election shall not have been called.

(As amended, Stats. 1866, 79.)

§ 808. A majority of the whole number of trustees shall form a board for the transaction of business, and every decision of a majority of the persons duly assembled as a board shall be valid as a corporate act.

§ 809. The first meeting of the trustees shall be called by a notice signed by one or more of the persons named trustees in the certificate, setting forth the time and place of the meeting, which notice shall be either delivered personally to each trustee, or published at least twenty days in some newspaper of the county in which is the principal place of business of the corporation, or if no newspaper be published in the county, then in some newspaper nearest thereto in the State.

§ 810. Whenever the capital stock of any corporation is divided into shares, and certificates thereof are issued, the stock of the company shall be deemed personal estate. Such shares may be transferred by indorsement and delivery of the certificate thereof, such indorsement being by the signature of the proprietor, or his or her attorney, or legal representative; but such transfer shall not be valid except between the parties thereto, until the same shall have been so entered upon the books of the corporation as to show the names of the parties by and to whom transferred, the number or designation of the shares, and the date of the transfer. In all cases in which shares of stock in corporations now existing, or hereafter incorporated under any law of this State, are held or owned by a married woman such shares may be transferred by her, her agent or attorney, without the signature of her husband, in the same manner as if such married woman were a femme sole. All dividends payable upon any shares of stock of a corporation held by a married woman, may be paid to such married woman, her agent, or attorney, in the same manner as if she were unmarried. And it shall not be necessary for her husband to join in receipt therefor; and any proxy or power given by a married woman, touching any share of stock of any corporation owned by her, shall be valid and be binding, without the signature of her husband, the same as if she were unmarried.

Term "personal property" includes stock.

§ 1081. Taxation of stock. Act 1, at p. 19.

[If so authorized by charter, corporation may make by-laws regulating and limiting transfers of stock. Pendergast v. Bank, 2 Saw. 108.]

§ 811. (As amended by act approved March 18, 1891.) The stockholders of any corporation formed under this act, may in the by-laws of the company prescribe the times, manners and amounts in which the payment of the sums subscribed by them respectively shall be made; but in case the same shall not be so prescribed, the trustees shall have power to demand and call in from the stockholders the sums by them subscribed, at such times and in such manner, payments or installments, as they may deem proper. The trustees shall also have power, at such time and in such amount, as they may from time to time deem the interests of the corporation to require, to levy and collect assessments upon the capital stock of the corporation, as herein provided. Notice of each assessment shall be given to the stockholders personally, or by publication once a week for at least four weeks, in some newspaper published in the county in which the principal place of business of the company is located, and in a newspaper published in the county wherein the property of the company or corporation is

## Assessments; dividends; debts — Stats., §§ S12-S16.

situated, and if no paper be published in either of such counties, then in the newspaper published nearest to the said principal place of business in the State. If after such notice has been given, any stockholder shall make default in the payment of the assessment upon the shares held by him, so many of such shares may be sold as will be necessary for the payment of the assessments upon all the shares held by him, her or them, together with all costs of advertising and expenses of sale. The sale of said shares shall be made at the office of the company at public auction to the highest bidder, after a notice thereof published for four weeks, as above in this section directed; and at such sale the person who shall pay the assessment so due, together with the expenses of advertising and sale, for the smallest number of shares, or portion of a share, as the case may be, shall be deemed the highest bidder.

[Evidence necessary to show party to be a stockholder in banking corporation. *Ross v. Bank*, 20 Nev. 191.]

What constitutes a stockholder under statutes of this State. *Rankin v. Leete*, 16 Nev. 242; s. c., 8 Am. Corp. Cas. 361. One who "holds" shares of stock, issued in his name, is recognized as a stockholder as well as one who "owns" them.

A stockholder in a banking corporation cannot be held liable for unpaid subscriptions, in an action at law against him as the garnishee of the principal debtor. *McKelvey v. Crockett*, 18 Nev. 238; s. c., 2 Pac. Rep. 386.

Unpaid subscriptions a trust fund for benefit of creditors. *Thompson v. Lake*, 19 Nev. 103; s. c., 7 Pac. Rep. 68.

Any secret arrangement between corporation and stockholders by which responsibility of stockholders is made less than appears on certificate is void as against creditors. *Id.*

Stockholder who is also a creditor cannot offset unpaid subscription as against general indebtedness of corporation. *Id.*

When such stockholder may participate ratably with other creditors in trust fund. *Id.*

In suit brought to subject equitable assets of corporation to claim of creditors, not necessary to make all stockholders defendants. Any stockholder may be sued for amount of his unpaid subscription, and has his remedy for contribution against others owing unpaid subscriptions. *Id.* Where many have a common interest, one may sue for benefit of all, and those who come in and establish their claims share with plaintiff in benefits of decree. *Id.* Creditor who brings suit not required to give notice to others, or get their consent. *Id.*

Not necessary for creditor, before instituting suit to compel payment of subscriptions, to make an effort to compel the corporation to make the call. *Thompson v. Huffaker*, 19 Nev. 171; s. c., 7 Pac. Rep. 870. Unpaid subscriptions, when statute of limitations does not apply to. *Id.* Claim for need not be presented to estate for allowance. *Thompson v. Bank*, 19 Nev. 242; s. c., 9 Pac. Rep. 121. Call for assessment on, not necessary before suit. *Id.*

Action against trustees by stockholders for levying unnecessary assessments with intent to defraud; sufficiency of complaint; corporation a proper party. *Marshall v. Golden Fleece Co.*, 16 Nev. 156.]

§ S12. Whenever any stock is held by any person as executor, administrator, guardian or trustee, he shall represent such stock at

all meetings of the company, and may vote accordingly as a stockholder.

Election of trustees. § S06.

§ S13. Any stockholder may pledge his stock, by a delivery of the certificates, or other evidence of his interest, but may nevertheless represent the same at all meetings and vote as a stockholder.

Transfer of stock. § S10.

§ S14. It shall not be lawful for the trustees to make any dividend except from the net profits arising from the business of the corporation; nor to divide, withdraw, nor in any way pay to the stockholders, or any of them, any part of the capital stock of the company; nor to reduce the capital stock, unless in the manner prescribed in this act; and in case of any violation of the provisions of this section, the trustees, under whose administration the same may have happened, except those who may have caused their dissent thereto to be entered at large on the minutes of the board of trustees at the time, or were not present when the same did happen, shall, in their individual and private capacities, be jointly and severally liable to the corporation, and the creditors thereof, to the full amount so divided, withdrawn or reduced, or paid out; Provided, That this section shall not be construed to prevent a division and distribution of the capital stock of the company, which shall remain after the payment of all its debts, upon the dissolution of the corporation or the expiration of its charter.

(As amended, Stats. 1866, 188.)

Increase or decrease of capital stock. §§ S19, S20.

§ S15. The total amount of debts of the corporation shall not at any time exceed the amount of capital stock actually paid in, and in case of an excess, the trustees under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the board of trustees at the time, and except those not present, when the same did happen, shall in their individual and private capacities be liable jointly and severally, to the said corporation, and in event of dissolution, to any of the creditors thereof, for the full amount of such excess.

[See *Paxton v. M. & M. Co.*, 2 Nev. 257.]

§ S16. No corporation organized under this act shall, by any implication or construction, be deemed to possess the power of issuing bills, notes, or other evidences of debt, for circulation as money.

See § S02 and Const., art. VIII, § 6.



Stock-book; false entries; increase or decrease of capital; dissolution — Stats., §§ 817-823.

§ 817. It shall be the duty of the trustees of every company incorporated under this act to keep a book, containing the names of all persons, alphabetically arranged, who are or shall become stockholders of the corporation, and showing the number of shares of stock held by them respectively, and the time when they became the owners of such shares; which book, and all other books of the company, during the usual business hours of the day, on every day except Sunday and the legal holidays, shall be open for the inspection of stockholders of the company, at the office of the principal place of business of the company; and any stockholder or creditor of the company may have the right to demand and receive from the clerk, or other officer having the charge of such, a certified copy of any entry therein, or to demand and receive from any clerk, or officer, a certified copy of any paper placed on file in the office of the company, and such book or certified copy shall be presumptive evidence of the facts therein stated, in any action or proceeding against the company, or any one or more of the stockholders.

See § 829.

§ 818. If at any time the clerk, or other officer having charge of such book, shall make any false entry, or neglect to make any proper entry therein, or having the charge of any papers of the company, shall refuse or neglect to exhibit the same, or allow the same to be inspected, or extracts to be taken therefrom, or to give a certified copy of any entry, as provided in the preceding section, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the party injured a penalty of not less than one hundred dollars nor more than one thousand dollars, and all damages resulting therefrom, to be recovered in an action for debt in any court having competent jurisdiction in the county in which the principal place of business of the corporation is located.

§ 819. Any company incorporated under this act may, by complying with the provisions herein contained, increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purposes of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of debts and liabilities shall exceed the sum to which the capital is proposed to be diminished, such amount shall be satisfied and reduced so as not to exceed the diminished amount of the capital.

§ 820. Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders shall be called by notice signed by at least a majority of the trustees, and published at least eight weeks in some newspaper published in the

county where the principal place of business of the company is located; or if no newspaper is published in the county, then in some newspaper nearest thereto in the State, which notice shall specify the object of the meeting, the time and place where it is to be held, and the amount which it is proposed to increase or diminish the capital, and a vote of two-thirds of all the shares of stock shall be necessary to increase or diminish the amount of the capital stock.

§ 821. If at a meeting so called, a sufficient number of votes have been given in favor of increasing or diminishing the amount of capital, a certificate of the proceedings, showing a compliance with these provisions, the amount of capital actually paid in, the whole amount of debts and liabilities of the company, and the amount to which the capital stock is to be increased or diminished, shall be made out and signed and verified by the affidavit of the chairman and secretary of the meeting, certified to by a majority of the trustees and filed as required by the second section of this act; and when so filed the capital stock of the corporation shall be increased or diminished to the amount specified in the certificate.

§ 822. Upon the dissolution of any corporation formed under this act, the trustees at the time of the dissolution shall be trustees of the creditors and stockholders of the corporation dissolved, and shall have power and authority to sue for and recover the debts and property of the corporation, by the name of trustees of such corporation, collect and pay the outstanding debts, settle all its affairs, and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expenses.

§ 823. Any corporation formed under this act may dissolve and disincorporate itself by presenting to the district judge of the district in which the office of the company is located a petition to that effect, accompanied by a certificate of its proper officers setting forth that at a meeting of the stockholders, called for the purpose, it was decided by a vote of a majority of the stockholders to disincorporate and dissolve the incorporation. Notice of the application shall then be given by the clerk, which notice shall set forth the nature of the application, and shall specify the time and place at which it is to be heard, and shall be published in some newspaper of the county once a week for eight weeks, or if no newspaper is published in the county, by publication in the newspaper nearest thereto in the State. At the time or place appointed, or at any other time or place to which it may be postponed by the judge, he shall proceed to consider the application, and if satisfied that the corporation has taken the necessary preliminary steps and obtained the necessary vote to dissolve it-



## Removal of place of business; mining claims, etc.—Stats., §§ 824-829.

self, and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved.

Dissolved mining corporation. § 827. Corporation not dissolved by failure to elect trustees. § 807.

§ 824. Any corporation desiring at any time to remove its principal place of business into some other county in the State, shall file in the office of the county clerk of such county a certified copy of its certificate of incorporation. If it is desired to remove its principal place of business to some other city, town or locality within the same county, publication shall be made of such removal at least once a week for four weeks in the newspaper published nearest the city, town or locality from which the principal place of business of such corporation is desired to be removed. The formation or corporate acts of no corporation heretofore formed under this act shall be rendered invalid by reason of the fact that its principal place of business may not have been designated in its certificate of incorporation; Provided, That within six months from the passage of this act such corporation shall cause publication to be made once a week for at least four weeks in the newspaper published nearest the city, town, or locality where the principal place of business of such corporation has in fact been located, designating the city, town, or locality, and county where its principal place of business shall be located. On compliance with the provisions of this section, in the several cases herein mentioned, the principal place of business of any corporation shall be deemed established or removed at or to any designated city, town or locality and county in the State.

§ 825. In corporations already formed, or which may hereafter be formed under this act, where the amount of the capital stock of such corporation consists of the aggregate valuation of the whole number of feet, shares, or interest in any mining claim in this State, for the working and development of which such corporation shall be or has been formed, no actual subscription to the capital stock of such corporation shall be necessary, but each owner in said mining claim shall be deemed to have subscribed such an amount to the capital stock of such corporation as under the by-laws will represent the value of so much of his or her interest in said mining claim, the legal title to which he or she may by deed, deed of trust, or other instrument, vest or have vested in such corporation for mining purposes, such subscription to be deemed to have been made on the execution and delivery to such corporation of such deed, deed of trust or other instrument, nor shall the validity of any assessment levied, or which may hereafter be levied by the board

of trustees of such corporation be affected by reason of the fact that the full amount of the capital stock of such corporation, as mentioned in its certificate of incorporation, shall not have been subscribed as provided in this section; Provided, That the greater portion of said amount of capital stock shall have been subscribed; And, provided further, That this section shall not be so construed as to prohibit the stockholders of any corporation formed, or which may be formed for mining purposes, as provided in this section, from regulating the mode of making subscriptions to its capital stock and calling in the same by by-laws or expressed contract.

[See *Smith v. Mfg. Co.*, 1 Nev. 423; *O'Meara v. Same*, 2 id. 112.]

§ 826. All corporations already formed, or which may hereafter be formed under this act for mining purposes, shall be governed by the mining laws of the district where the mine is located; Provided, That the amount of money so expended in incorporating said company, and the procuring of the necessary books for said corporation, shall be deemed in law as so much money expended in working the claim.

§ 827. When any mining incorporation, holding or working any mine or mines in this State, shall disincorporate under the provisions of this act, the board of trustees of said corporation shall convey by deed, to the stockholders of said company, all mines and other property of said corporation, in proportion to the amount of stock each stockholder shall hold in the mine or mines, and other property owned by said corporation, which deed shall be recorded in the office of the county recorder of the county in which the mine is located.

§ 828. An act entitled "An act to provide for the formation of corporations for certain purposes," approved December twentieth, one thousand eight hundred and sixty-two; also an act amendatory of and supplementary to an act entitled "An act to provide for the formation of corporations for certain purposes," approved December twentieth, one thousand eight hundred and sixty-two; approved February nineteenth, one thousand eight hundred and sixty-four, are hereby repealed.

See §§ 830, 831.

§ 829. Corporations formed under the provisions of this act for mining, milling, or ore reduction purposes, may subscribe to and become stockholders in any corporation, company or association now formed, or which may hereafter be formed, for the purpose of constructing any tunnel, shaft or other work, which may be calculated to aid or facilitate the exploration, development or working of any mine or mining ground in

Ratification of orders, etc.; foreign corporations — Stats., §§ 830-833, 1073, 1074.

this State; and any corporation so becoming a stockholder therein shall, in proportion to its interest, be subject to all the liabilities, and entitled to all the rights and privileges of an individual stockholder.

(As amended, Stats. 1867, 44.)

AN ACT to extend the provisions of an act entitled "An act to provide for the formation of corporations for certain purposes," approved March 10, 1865; to corporations created prior to that time, and to confirm proceedings taken for the purpose of disincorporating corporations, and for the purpose of increasing the capital stock of corporations.

(Approved January 16, 1866, 46.)

Whereas. It is doubtful whether certain sections of the act referred to above apply to corporations created and formed prior to the passage of said act; therefore,

§ 830. Section 1. The act entitled "An act to provide for the formation of corporations for certain purposes," approved March tenth, eighteen hundred and sixty-five, [§§ 802-829] and each section and provision thereof, shall apply to all corporations created or formed, or doing business in this State, or the late territory of Nevada, prior to the passage of said act, and shall constitute the rule for the government and management of the affairs and business of such corporations.

§ 831. § 2. All orders or decrees made by any court or judge in this State, since March the tenth, one thousand eight hundred and sixty-five, disincorporating or dissolving any corporation created or formed, or doing business in this State, or the late territory of Nevada, prior to said date, and all certificates of the proceedings of stockholders' meetings of such corporations, held for the purpose of increasing or diminishing the amount of the capital stock of the same, are hereby ratified, confirmed, and made valid; and all orders made as aforesaid, and all proceedings had and taken in pursuance to and by virtue thereof, are hereby ratified and made valid; and all the certificates aforesaid, having for their object the increase or diminution of the capital stock of such corporation, and filed as provided in section 2 of said act of March tenth, are made valid, and from the time of the filing thereof, the capital stock of the corporation named in any such certificate, shall be deemed increased or diminished as therein provided; and all proceedings subsequently had and done under, in pursuance to, and having reference to said certificate, and the laws applying thereto, shall be valid and effectual for all purposes.

§ 832. All associations or companies heretofore organized and acting in the form and manner of corporations, and that have filed certificates for the purpose of being incorporated, in the office of the county clerk,

in which the principal place of business of the company is intended to be located, and a certified copy of the same in the office of the secretary of State, but whose certificates are in some manner defective, or have been improperly acknowledged, or have been acknowledged before a person not authorized by law to make such acknowledgments, or where a conveyance has been made to the persons named in the certificate of incorporation as trustees, prior to the filing of the certificate of incorporation as above stated, are hereby declared to be and to have been a corporation from the date of filing of such certificate, in the same manner, and with like effect and intent, as if such certificates were without fault and properly acknowledged before an officer having authority to take such acknowledgments, and such conveyances or deeds shall be held and construed to convey to the corporations respectively, the title and estate mentioned therein, for the uses and purposes, in such conveyances or deeds as expressed therein.

§ 833. Nothing herein contained shall be held or construed so as to impair any rights which have heretofore been acquired by or vested in any person or persons whatsoever.

See Const., art. I, § 15.

### Foreign Corporations.

§ 1073. Every incorporated company or association created and existing under the laws of any other State, or of any foreign government, shall file in the office of the county recorder of each county in this State, wherein such corporation is engaged in carrying on business of any character, a properly authenticated copy of their certificate of incorporation, or of the act or law by which such corporation was created, with a proper certificate of the officers of the corporation as to the genuineness of the same; and to each of such certificates shall be appended a duly certified list of the officers of such corporation, which said list, with the proper supplemental certificate, shall be corrected as often as a change in such officers occurs; and a copy of such certificate, duly certified to by the county recorder wherein such certificate is filed, may be introduced in evidence to prove the fact of the existence of such corporation, without further proof.

(As amended, Stats. 1877, 57.)

§ 1074. Any person or persons who shall act as the managing agent or superintendent of any such corporation, in conducting or carrying on any business of such corporation, in any of the counties of this State, without any such certificate having been filed as required by section one of this act, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not less than fifty nor more than five hundred dollars, to which may be added imprisonment in the county jail for any period not exceeding



## Foreign corporations; real property — Stats., 1074a-1076, 2655, 2656.

six months; Provided, That in all actions against such corporations, associations or companies, which have neglected to file the proper certificate or act of their incorporation, as heretofore provided, it shall be sufficient to establish the legal existence of such corporation by the proof of their acting as such.

(As amended, Stats. 1877, 57.)

Foreign corporation may hold real estate and exercise right of eminent domain. §§ 2655, 2656. Security for costs required. §§ 3510, 3511.

[Existence of corporation created in another State will be recognized by courts of this State, and power of such corporation and its officers will be inquired into. *Curtis v. McCullough*, 3 Nev. 202.]

Officers of a corporation are not recognized as such in a State in which the corporation does not exist. But a foreign corporation may have agents in any State. *Curtis v. McCullough*, 3 Nev. 202. Foreign corporation within exception of statute of limitations as to persons absent from the State when cause of action accrued. *Robinson v. Imperial S. M. Co.*, 5 Nev. 45; *State v. R. R. Co.*, 10 id. 48; *Barstow v. Union, etc., Co.*, id. 386.]

§ 1074a. Every incorporated company or association created and existing under the laws of any other State or territory, or foreign government, or the government of the United States, owning property or doing business in this State, shall appoint and keep in this State an agent upon whom all legal process may be served for such corporation or association. Such corporation shall file a certificate, properly authenticated by the proper officers of such company, with the secretary of State, specifying the full name and residence of such agent, which certificate shall be renewed by such company as often as a change may be made in such appointment, or vacancy shall occur in such agency.

§ 1074b. Any and all legal process may be served upon such company, by delivering to such agent personally, a copy of such process, which shall be legal and valid.

§ 1074c. If any such company shall fail to appoint such agent, or fail to file such certificate for ninety days after the passage of this act, or for ten days after a vacancy occurs in such agency, then it shall be lawful to serve such company with any and all legal process by delivering a copy to the secretary of State, and such service shall be valid to all intents and purposes; Provided, That in all cases of service under this act, the defendant shall have forty days in which to answer or plead. This act shall be as giving an additional mode and manner of serving process and as not affecting the validity of any service of process hereafter made, which would be valid under any statute now in force.

§ 1075. All and any corporations heretofore or hereafter formed in the State of Nevada,

and under its laws, upon the written consent or request of the holder or holders of three-fourths of the stock thereof, filed with the secretary of the corporation to be affected, shall have the power and right to consolidate all corporate franchises and property of every name and nature with any other then existent corporation or corporations of the State of Nevada, or of any State or territory in the United States of America, as may be agreed by the boards of trustees or directors of the corporations consolidating.

§ 1076. Such consolidation shall not relieve the consolidating corporations, or either of them, from any liabilities, nor shall it extinguish or limit any franchise or right. It shall be evidenced by a certificate, under the corporate seals of the consolidating corporations, signed by the president and secretary of each, briefly reciting the act or acts sought to be accomplished, and generally the property sought to be conveyed or assigned, together with the name of the receiving corporation, which may be that of either of the consolidating corporations, or a new one. Such certificate shall, without further conveyance or assignment, operate as a transfer of all property, real, personal, or mixed, of the consolidating corporations to the new corporation. It shall be filed in the office of the secretary of State, and a certified copy thereof shall at all times and all places be evidence of its contents; Provided, That the consolidated company shall be and remain subject to the laws of the State of Nevada and the State or territory respectively of which the corporation consolidated is the creature, and shall have in all respects the same privileges as though the consolidation had not taken place, and the same rights and privileges as if said consolidated company had incorporated in the State of Nevada.

## CHAPTER XVIII.

## Real Property and Conveyances.

Sec. 2655. Authorizing corporation to hold property.

2656. Right of eminent domain granted to foreign corporations.

§ 2655. Any non-resident alien, person, or corporation, except subjects of the Chinese Empire, may take, hold and enjoy any real property, or any interest in lands, tenements, or hereditaments within the State of Nevada, as fully, freely, and upon the same terms and conditions as any resident citizen, person, or domestic corporation.

§ 2656. The right of eminent domain is hereby granted to such non-resident or foreign corporations, upon the same terms and conditions as the same is granted to resident or domestic corporations.

See Const., art. I, § 8; art. VIII, § 7.



## CHAPTER XX.

## Proceedings in Civil Cases.

- Sec. 3051. Summons shall be served, how.  
 3052. Service by publication.  
 3139. Injunction to suspend ordinary business of a corporation.  
 3149. Shares of stock may be attached.  
 3150. Right of attachment, how executed against shares of stock.  
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 3659. Time of commencing actions against directors or stockholders; proceedings in quo warranto against corporations.  
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*Insolvent Corporations.*

- Sec. 3892. Insolvent Debtors Act applicable to corporations.

## TITLE III. PROCESS.

§ 3051. The summons shall be served by delivering a copy thereof, attached to the certified copy of the complaint, as follows: First—If the suit be against a domestic corporation, organized under the laws of this State, to the president or other head of the corporation, secretary, cashier, or managing agent thereof. Second—If the suit be against a foreign corporation or a non-resident joint-stock company or association, doing business within this State, to an agent, cashier, or secretary, president, or other head thereof; Provided, That if the suit be against a corporation organized under the laws of the State of California, in addition to such personal service, a copy of the summons, attached to a certified copy of the complaint, shall be deposited in the post-office, addressed to the president and trustees of said corporation, at their place of business in the State of California, if the same is known, or can by due diligence be ascertained; And, provided further, That when such California

corporation has no president or other head, secretary, cashier, or managing agent, upon whom service of summons can be had, the court before which such action has been brought, or the judge thereof, may, upon the affidavit of the plaintiff, showing the existence of the foregoing facts, make an order for the service on the defendant of a copy of the summons and complaint in the action. Such service may be made by some competent person appointed by the court or the judge thereof, or by the sheriff of the county, within the State of California, within which the principal place of business of such corporation may be located. Such service may be made personally, within said State of California, by said sheriff or other person appointed by the court or judge, and shall be made in the same manner as required by law for the personal service of summons within this State. The service shall be upon the president or other head, secretary, cashier, or managing agent of such corporation, and when proved to the satisfaction of the court, by the sworn return of said sheriff or other person so appointed, shall be for all purposes as valid and effectual as if made by a competent officer within this State; and in case such corporation shall not appear in the action within forty days after such service, its default and judgment thereon may be entered as in other cases \* \* \*.

Service in justices' courts. § 3540.

[Mode of service of process on corporation under the Bankrupt Act. In re R. R. Co., 3 Saw. 240.]

Summons may be served on corporation by serving copy on the secretary. *Gluing v. Independent, etc., Co.*, 1 Nev. 247.

Service upon business manager of a corporation not a compliance with statute requiring service to be upon the "managing agent." *Scorpion v. Marsano*, 10 Nev. 370.

Service on deputy secretary of State not a compliance with this law, and confers no jurisdiction. *Lonkey v. Keyes S. M. Co.*, 21 Nev. 312; s. c., 31 Pac. Rep. 57.

In an action against California corporation, mailing of copy of summons and complaint to the president and trustees added no force to officer's return, in the absence of the personal service required by law. *Id.*

Requisites of affidavit for publication of summons against a foreign corporation. *Victor M. & M. Co. v. Justices' Court*, 18 Nev. 21; s. c., 1 Pac. Rep. 831.]

§ 3052. (Amended L. 1889, p. 22.) When the person on whom the service is to be made resides out of the State, \* \* \* or being a corporation or joint-stock association, cannot be served as provided in section twenty-nine,\* and the fact shall appear by affidavit, to the satisfaction of the court or judge thereof, and it shall appear, either by affidavit or by a verified complaint on file, that a cause of action exists against the defendant in respect to whom the service

Injunctions; attachm't; costs — Stats., §§ 3139, 3149, 3241, 3510-3512, 3540, 3659, 3711, 3712.

is to be made, or that he is a necessary or proper party to the action, such court or judge may grant an order that the service be made by the publication of the summons.

[Service of summons upon a California corporation is valid, when. Caples v. R. R. Co., 6 Nev. 265.]

## TITLE V. OF THE PROVISIONAL REMEDIES IN CIVIL ACTIONS.

### CHAPTER III.

#### Injunctions.

§ 3139. An injunction or restraining order to suspend the general and ordinary business of a corporation shall not be granted without due notice of the application therefor, to be served in the manner prescribed for service of the summons in the action.

#### Attachment.

§ 3149. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits therein, and all debts due such defendant, and all other property in this State of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

§ 3150. The sheriff to whom the writ is directed and delivered shall execute the same without delay, and if the undertaking mentioned in section 126 (attachment bond with two sureties) be not given, as follows:  
\* \* \* Third — Stock or shares, or interest in stock or shares, of any corporation or company, shall be attached by leaving with the president, or other head of the same, or the secretary, cashier, or managing agent thereof, a copy of the writ, and a notice stating the stock or interest of the defendant is attached in pursuance of such writ  
\* \* \*

## TITLE VII. OF THE EXECUTION OF JUDGMENT.

### CHAPTER I.

#### Execution.

§ 3241. \* \* \* Shares and interests in any corporation or company \* \* \* may be attached in execution, in like manner as upon writs of attachment. \* \* \* Until a levy, property shall not be affected by the execution.

## TITLE XIV. OF COSTS.

§ 3510. When a plaintiff in an action resides out of the State, or is a foreign corporation, security for the costs and charges which may be awarded against such plaintiff may be required by the defendant. When required, all proceedings in the ac-

tion shall be stayed until an undertaking, executed by two or more persons, be filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of three hundred dollars. A new or an additional undertaking may be ordered by the court or judge upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking be executed and filed.

§ 3511. Each of the sureties on the undertaking mentioned in the last section shall annex to the same an affidavit that he is a resident and householder, or freeholder, within the county, and is worth double the amount specified in the undertaking, over and above all his just debts and liabilities, exclusive of property exempt from execution.

§ 3512. After the lapse of thirty days from the service of notice that security is required, or of an order for new or additional security, upon proof thereof, and that no undertaking as required has been filed, the court or judge may order the action to be dismissed.

§ 3540. The summons shall be served by the sheriff or a constable of the county, or by any male citizen of the United States over twenty-one years of age, as follows: First.—If the action be against a corporation, by a delivery of a copy to the president or other head of the corporation, or to the secretary, cashier, or managing agent thereof, or when no such officer resides in the county, to a director resident therein.  
\* \* \*

See § 805, subd. 1, cross-references; §§ 3051, 3052.

§ 3659. The preceding sections of this act [defining time of commencing actions] shall not affect actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed or to enforce a liability created by law; but such actions must be brought within three years after the discovery by the aggrieved party, of the facts upon which the penalty or forfeiture attached, or the liability was created.

§ 3711. An information may be filed against any person unlawfully holding or exercising any public office or franchise within this State, or any office in any corporation created by the laws of this State, or the laws of the late territory of Nevada; or when any public officer has done or suffered any act which works a forfeiture of his office, or when any persons act as a corporation within this State without being authorized by law; or if, being incorporated, they do or omit acts which amount to a surrender or forfeiture of their rights and privileges as a corporation, or when they exercise powers not conferred by law.

§ 3712. Such information may be filed by



the prosecuting or district attorney of the proper county, whenever he deems it his duty so to do, or an occasion therefor arises.

§ 3713. He must file such information when directed to do so by the governor, the legislature, the district court, or the county commissioners.

§ 3714. Such information shall consist of a plain statement of the facts which constitute the grounds of the proceeding, addressed to the court, which shall stand for an original complaint.

§ 3715. Such statement shall be filed in the clerk's office, and summons issued and served in the same manner as provided for the commencement of civil action in the district court.

§ 3716. The defendants may appear and answer such information in the usual way as in civil actions; and, issue being joined, the case shall be tried in the same manner as civil actions, as nearly as may be.

§ 3721. When several persons claim to be entitled to the same office or franchise, an information may be filed against any or all of said persons, in order to try their respective rights thereto.

§ 3722. If the defendant be found guilty of unlawfully holding or exercising any office, franchise, or privilege; or if a corporation be found to have violated the law by which it holds its existence, or in any other manner to have done acts which amount to a surrender or forfeiture of its privileges, judgment shall be rendered that such defendant be ousted and altogether excluded from such office, franchise, or privilege, and also that he pay the costs of the proceeding.

§ 3725. In case judgment is rendered against a pretended, but not real, corporation, the costs may be collected from any person who has been acting as an officer or proprietor of such pretended corporation.

§ 3726. If a corporation is ousted and dissolved by the proceedings herein authorized, the court shall appoint some disinterested person as trustee of the creditors and stockholders, who shall receive a compensation for his services to be fixed by the court.

§ 3727. Said trustees shall enter into bond in such a penalty, and with such security, as the court approves, conditioned for the faithful discharge of his duties.

§ 3728. Suit may be brought on such bond by any person injured by the negligence or wrongful act of the trustee in the discharge of his duties.

§ 3729. The trustee shall proceed immediately to collect the debts and pay the liabilities of the corporation, and to divide the surplus among those thereto entitled.

§ 3730. The court shall, upon an application for that purpose, order an officer of such corporation, or any other person having possession of any of the effects, books, or papers of the corporation, in anywise necessary for the settlement of its affairs, to deliver the same to the trustee.

§ 3731. As soon as practicable after his appointment, the trustee shall make and file in the office of the clerk of the court, an inventory of all the effects, rights, and credits, which came to his possession or knowledge, the truth of which inventory shall be sworn to.

§ 3732. He shall sue for and recover the debts and property of the corporation, and shall be responsible to the creditors and stockholders respectively, to the extent of the effects which come into his hands, in the same manner as though he was the executor of a deceased person.

§ 3733. When judgment of ouster is rendered against a corporation on account of the misconduct of the directors, or officers thereof, such officers shall be jointly and severally liable to an action by any one injured thereby.

§ 3734. Any person who, without good reason, refuses to obey an order of the court, as herein provided, shall be deemed guilty of a contempt of court, and shall be fined in any sum not exceeding five thousand dollars, and imprisonment in the county jail until he comply with said order, and shall be further liable for the damages resulting to any person on account of his refusal to obey such order.

§ 3736. All proceedings under this act shall have precedence over all other cases, in order and time of trial, except criminal action, and shall be placed upon the calendar for trial immediately upon issue being joined, whether in law or in fact.

§ 3737. When judgment is against the defendant, the court shall allow to the prosecuting or district attorney such sum of money as may seem reasonable for his services; which sum shall be taxed with and collected as the other costs in the proceeding; unless judgment is rendered against the defendant no costs shall be allowed, except as provided for in section fourteen of this act.

§ 3892. The provisions of this act [relief of insolvent debtors] shall apply to corporations, and upon the petition of any officer of any corporation, duly authorized by the vote of the board of directors or trustees, at a meeting specially called for that purpose, or by the assent, in writing, of a majority of the directors or trustees, as the case may be, or upon a creditor's petition made and presented in the manner provided in the case of debtors, all the provisions of this act which apply to the debtor or set forth his duties, examination, or liabilities, or prescribe penalties, or relate to fraudulent conveyances, payments, and assignments applied to each and every officer of any corporation in relation to the same matters concerning the corporation. Whenever any corporation is declared insolvent all its property and assets shall be distributed to the creditors; but no discharge shall be granted to any corporation.



Frauds by corporate officers — Stats., §§ 4645, 4647, 4700, 4948, 4949.

## CHAPTER XXII.

### Crimes and Punishment.

Sec. 4645. On trials for forgery proof of incorporation necessary.

4647. Counterfeiting corporate seal.

4700. "Person" defined.

4702. Intent to injure or defraud a corporation.

§ 4645. On the trial of any person for forging any bill or note purporting to be the bill or note of some incorporated company or bank, or for passing or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it shall not be necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but the same may be proved by general reputation.

[Incorporation of bank need not be averred in indictment for forgery. State v. McKiernan, 17 Nev. 224; s. c., 9 Am. Corp. Cas. 540.]

§ 4647. Every person who shall fraudulently forge or counterfeit the seal \* \* \* of any corporation, and shall make use of the same, or shall forge or counterfeit the \* \* \* seal of any corporation, \* \* \* or shall have in his possession or custody any such counterfeit seal, and shall willfully conceal the same, knowing it to be falsely made and counterfeited, and shall thereof be convicted, shall be punished by imprisonment in the State prison for a term not less than one nor more than fourteen years.

Corporation may have seal. § 805, subd. 2.

§ 4700. Where the term "person" is used in this act to designate the party whose property may be the subject of any offense, such terms shall be construed to include \* \* \* all public and private corporations, as well as individuals.

§ 4702. When any intent to injure, defraud, or cheat, is required by law to be shown, in order to constitute any offense, it shall be sufficient if such intent be to injure, defraud, or cheat, \* \* \* any corporation, body politic or private individuals.

## CHAPTER XXIII.

### Miscellaneous Enactments.

Sec. 4948. No Mongolian or Chinese shall be employed by certain corporations.

4949. Penalty.

§ 4948. Hereafter no right of way or charter, or other privileges for the construction of any public works by any railroad or other corporation or association shall be granted to such corporation or association, except upon the expressed condition that no Mongolian or Chinese shall be employed on or about the construction of such work in any capacity.

§ 4949. Any violation of the conditions of this act shall work a forfeiture of all rights, privileges, and franchise granted to such corporation or association.

## LEGISLATIVE ACTS PASSED SUBSEQUENTLY TO 1885.

1. Revenue Act.
2. Act to promote purity of elections.

### Act 1.

AN ACT to provide revenue for the support of the government of the State of Nevada, and to repeal certain acts relating thereto.

The People of the State of Nevada, represented in senate and assembly, do enact as follows:

§ 6. \* \* \* The term "personal property," when used in this act, shall be deemed and taken to mean, and it is hereby declared to mean and include \* \* \* the capital stock of all corporations (except the capital stock of corporations organized for mining purposes), companies, associations, ferries, or individuals doing business or having an office within this State; \* \* \*

§ 13. The owner or holder of any stock, in any firm, incorporated company or association, the entire capital of which is invested in property which is assessed, or the capital of which is assessed, shall not be assessed individually for his stock in such company or association, \* \* \* The property of every firm, incorporated company or

association shall be taxed in the county where the property is situated; Provided, That whenever any portion of the property of any such company shall be assessed and taxed in the county wherein the same is located, then, upon presentation, at the principal office of such company, of the certificate or receipt of the collector of said county, that such taxes have been paid in another county, the same shall be deducted at the principal office, from the aggregate amount of taxes imposed upon, or paid by said county, for the same property, in the county wherein the principal office of said company is situated. \* \* \*

(Approved March 23, 1891.)

See Const., art. VIII, § 2. Stock in personality. § 810.

### Act 2.

AN ACT to promote the purity of elections by regulating the conduct thereof, etc.

The People of the State of Nevada, represented in senate and assembly, do enact as follows:

§ 36. \* \* \* It shall not be lawful for any employer in paying his employees the

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Pay envelopes, etc.—Act, March 16, 1895.

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salary or wages due them to inclose their pay in "pay envelopes," upon which there is written or printed the name of any candidate, or any political mottoes, devices or arguments, containing threats express or implied, intended or calculated to influence the political opinions or actions of such employes. Nor shall it be lawful for any employer, within ninety days of an election, to put up or otherwise exhibit in his factory, workshop, office or other establishment or place where his workmen or employes are working, or where they come to receive their pay, any hand-bill or placard containing any threat, notice or intimation that in case any particular ticket of a political party or organization or candidate shall be elected, work in his place or establishment shall cease, in whole or in part, or his place or establishment be closed, or the salaries or wages of

his workmen or employes be reduced or other threats, express or implied, intended or calculated to influence the political opinions or actions of his workmen or employes. This section shall apply to corporations as well as individuals, and any person or corporation violating the provisions of this section is guilty of a misdemeanor, and any corporation violating this section shall forfeit its charter.

§ 37. Any person convicted of a misdemeanor under the provisions of this act, shall, unless a different punishment has been provided for the offense of which he may be so convicted, be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail, not exceeding six months, or by both such fine and imprisonment.

(Approved March 16, 1895.)

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NEW HAMPSHIRE.

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# NEW HAMPSHIRE.

## CONSTITUTION OF NEW HAMPSHIRE—1889.

### PROVISIONS RELATING TO CORPORATIONS.

#### PART I.

##### Bill of Rights.

- Art. XII. Private property inviolate.  
XXIII. Retrospective laws prohibited.

#### PART II.

##### Form of Government.

- Art. V. Towns may not aid private corporations.

#### PART I.

##### Bill of Rights.

- Art. XII. \* \* \* No part of a man's property shall be taken from him or applied to public uses without his own consent or that of the representative body of the people.  
\* \* \*

[The property of a private corporation stands in this respect on the same ground with the property of individuals. *Dartmouth College v. Woodward*, 1 N. H. 120.

The legislature has power to permit a turnpike corporation to lay out their road upon an ancient highway. *State v. Hampton*, 2 N. H. 22.

The power of the legislature to take property of individuals for public purposes is indisputable, and it may take from one corporation and give it to another. But when this power is exercised, a just compensation must be made. *Bristol v. New Chester*, 3 N. H. 534.

The property of a private corporation may be taken for a public use, provided compensation is made. *Barber v. Andover*, 8 N. H. 398.

The easement or franchise of any corporation, or any part thereof, may be taken, when necessary, for a public use. *Peirce v. Somersworth*, 10 N. H. 369.]

Art. XXIII. Retrospective laws are highly injurious, oppressive, and unjust. No such laws, therefore, should be made, either for the decision of civil causes or the punishment of offenses.

See ch. 148, § 19.

[The charter of a private corporation is not a contract within meaning of that clause of the Constitution of the United States prohibiting States from passing laws impairing the obligation of contracts. *Dartmouth College v. Woodward*, 1 N. H. 111; s. c., 65 Id. 473; reversed, 4 Wheat. (U. S.) 463.

An act of the legislature of New Hampshire, altering a charter without the consent of the corporation, in a material respect, is an act impairing the obligation of a contract, and is unconstitutional and void. Id.

But the law of New Hampshire remains the same. See *Opinion of Justices*, 66 N. H. 629; s. c., 33 Atl. Rep. 1076].

#### PART II.

##### Form of Government.

Art. V. \* \* \* The general court shall not authorize any town to loan or give its money or credit, directly or indirectly, for the benefit of any corporation having for its object a dividend of profits, or in any way aid the same by taking its stock or bonds.

[A statute which authorizes towns to raise and appropriate money to aid in the construction of a railroad, is not in conflict with the Constitution. *Perry v. Keene*, 56 N. H. 514.]



## PUBLIC STATUTES OF NEW HAMPSHIRE—1891.

## TITLE II. OF STATUTES AND LEGISLATIVE PROCEEDINGS.

## CHAPTER II.

## Construction of Statutes.

- Sec. 9. "Person."  
 10. "Charter."  
 11. "Seal."

§ 9. The word "person" may extend and be applied to bodies corporate and politic as well as to individuals.

[The word "person" includes corporations in the tax laws of the State. *Bank v. Nashua*, 46 N. H. 401.]

The word "party," as well as the word "person" may extend and be applied to bodies corporate and politic. *Hollis v. Davis*, 56 N. H. 83.]

§ 10. The word "charter" may include the articles of agreement by which a corporation is formed under the general laws.

See ch. 147.

§ 11. When the seal of a court, public officer, or corporation is required by law to be affixed to any paper, the word "seal" shall include an impression of the official seal made upon the paper alone as well as an impression thereof made by means of wax or a wafer affixed thereto.

See ch. 148, § 3, subd. 3.

## TITLE III. OF THE PROPERTY AND REVENUE OF THE STATE.

## CHAPTER XIV.

## Charter Fees.

- Sec. 5. Corporations created by legislature; charter fees of.  
 6. Charter fees of voluntary corporations.  
 7. Charter void if fees are not paid.  
 8. Charter void on false pretense regarding place of business.  
 9. If charter void, stockholders liable as partners.  
 10. Attorney-general to prosecute violations.

§ 5. Within thirty days after the close of any session of the legislature, parties procuring the passage of any act at that session incorporating, or renewing the corporate powers of, a corporation which is to carry on its business and have its principal office in this State, shall pay to the State treasurer a sum according to the nature of the corporation, as follows:—savings banks, the sum of one hundred dollars; other banks

one-tenth of one per cent., and railroads and insurance companies one-twentieth of one per cent., upon the largest amount of capital authorized by the act; other corporations having for their object a division of profits, the sum of fifty dollars; and for every act in amendment of any such act the sum of twenty-five dollars.

§ 6. (As amended February 26, 1895.) Every corporation which is not to carry on its business and have its principal office in this State, obtaining a charter or an act increasing its capital stock from the legislature, or organized under the general corporation laws of the State, shall pay to the State treasurer, within thirty days after the close of the session if its charter is special, or at the time of recording its articles of association if it is formed under the provisions of the public statutes, a charter fee on the largest amount of the capital or increase of capital authorized by its charter or articles of association, as follows: Where the amount of said capital or increase does not exceed twenty-five thousand dollars, ten dollars; where it exceeds twenty-five thousand dollars and does not exceed one hundred thousand dollars, twenty-five dollars; where it exceeds one hundred thousand dollars and does not exceed five hundred thousand dollars, fifty dollars; where it exceeds five hundred thousand dollars and does not exceed one million dollars, one hundred dollars; where it exceeds one million dollars, two hundred dollars.

§ 7. Acts of the legislature and articles of association which come within the provisions of the two preceding sections shall be void if the sums therein specified are not paid to the State treasurer as therein required.

§ 8. If the parties procuring the passage of any act of incorporation, or renewal thereof, or organizing as a corporation under the general laws of the State, shall falsely pretend that the corporation is to carry on its business and have its principal office in this State for the purpose of avoiding the charter fee in whole or in part, the act or articles of association shall thereby be rendered void.

§ 9. If the charter or articles of association of a corporation are rendered void by any of the provisions of the two preceding sections, the stockholders thereof shall be liable as partners, and no suit against any of said stockholders shall abate by reason of the non-joinder of others.

§ 10. It shall be the duty of the attorney-general to institute and prosecute to final

judgment proceedings to have the charter or articles of association of any corporation declared void, which is made so by the provisions of this chapter; and such remedy shall be regarded as cumulative.

#### TITLE IX. OF TAXATION.

Ch. 55. Of persons and property liable to taxation.  
56. Property, where and to whom to be taxed.

#### CHAPTER LV.

##### Persons and Property Liable to Taxation.

- Sec. 6. Real estate of railroads, etc., not used in ordinary business, where taxed.  
7. Personal estate. I. Stock and public funds. II. In corporations in the State. III. In corporations out of the State not there taxed. IV. Surplus capital of banks.  
9. Stock in corporations not taxed if no dividend of profits.  
10. Stock not to be twice taxed.  
11. Towns may exempt manufacturing establishments, when.

§ 6. The real estate of railroad, telegraph, and telephone corporations and companies, not used in their ordinary business, shall be appraised and taxed by the authorities of the towns in which it is situated.

Where taxed. Ch. 56, § 9.

§ 7. (As amended February 26, 1897.) Personal estate liable to be taxed is,—

2. Stock in corporations in the State, except where the property represented by the stock is taxable directly to the corporation.
3. Stock in corporations located out of the State, owned by persons living in the State, except where either the stock or the property represented by it is taxed in the towns or States where the corporations are located.
4. The surplus capital on hand of banking institutions.

Where and to whom taxed. Ch. 56, § 7. Double taxation. § 10, post.

[Real estate belonging to a savings bank is taxable to the bank in the town or place where the real estate is situated. *Bank v. Nashua*, 46 N. H. 389.

If a savings bank owns stock in another corporation, the bank is not taxable for the stock in the town or place where the bank is situated. *Id.*

The property of manufacturing corporations is taxable to the corporation in the town where the property is situated. *Smith v. Burley*, 9 N. H. 423.

A tax cannot lawfully be assessed against the property of a corporation when the stock is at the same time taxed to its owners. *Tel. Co. v. State*, 63 N. H. 167.

If a railroad corporation is situated in another State, and the road and all its property are taxed in that State, to the corporation on the same valuation, and at the same rate as the property of individuals, a stockholder, residing in this State, is not liable to be taxed here for his stock in the road. *Smith v. Exeter*, 37 N. H. 556; *Kimball v. Milford*, 54 *Id.* 406.

Subdivision 3 of above section construed. *Robinson v. Dover*, 59 N. H. 522.

The undivided profits of a national bank, beyond the amount required by law to be kept as a surplus fund, are taxable, though invested in government bonds. *Bank v. Concord*, 59 N. H. 75.]

§ 9. Stock in corporations shall not be taxed, if the nature and purposes of the corporation are such that no dividend of its profits is to be made.

§ 10. No statute provisions shall be so construed as to subject any stock to double taxation.

See note to § 7, ante, and to ch. 56, § 7.

[Deposits in savings banks are held by the bank as trustees for the depositors, and are not taxable twice, once to the bank and again to the depositors. *Berry v. Windham*, 59 N. H. 288; *Bank v. Portsmouth*, 52 *Id.* 17. It is a fundamental principle in taxation that the same property shall not be subject to a double tax, payable by the same party. *Id.*]

§ 11. Towns may by vote exempt from taxation for a term not exceeding ten years any manufacturing establishment proposed to be erected or put in operation therein, and the capital to be used in operating the same, unless such establishment has been previously exempted from taxation by some town.

[Above section does not confer authority to exempt the same property for a second period of ten years. *Boody v. Watson*, 63 N. H. 320; see *Same v. Same*, 64 *Id.* 162; s. c., 9 *Atl. Rep.* 794; *State v. Express Co.*, 60 N. H. 259.]

#### CHAPTER LVI.

##### Persons and Property, Where Taxed.

- Sec. 6. Surplus capital in banks, where bank is located.  
7. Stock in corporations, where and to whom taxed.  
9. Estate taxable to corporations where corporation is located.

§ 6. The surplus capital on hand in banking institutions shall be taxed in the towns wherein such banking institutions are located.

§ 7. Stock in corporations, liable to be taxed, though pledged, mortgaged, or assigned as security, shall be taxed to the general owner thereof in the town in which he resides, if in this State; otherwise to the corporation in the town in which its principal office or place of business in the State is.

See ch. 55, § 7.

[One who subscribes for shares in a bank, and pays part of the amount of the capital, and conveys his shares to a bank to secure a residue, is liable to be taxed for the amount thus paid in, as the owner of bank stock. *Tucker v. Aiken*, 7 N. H. 113.

A tax cannot lawfully be assessed against the property of a corporation when the stock is at the same time taxed to its owners. *Tel. Co. v. State*, 63 N. H. 167.]

Conveyances and mortgages, etc.—Stats., ch. cxxxvii, § 2; ch. cxi, §§ 8, 21; ch. cxlvii, § 1.

§ 9. Taxable property of corporations, and property taxable to corporations, shall be taxed to the corporation by its corporate name, in the town in which it is located, except where other provision is made.

See ch. 55, §§ 6, 7.

[Toll bridges owned by corporations are to be taxed to the corporations. Such bridges across the Connecticut river are taxable in this State. *Bridge v. Richardson*, 8 N. H. 207.]

The property of a manufacturing corporation is taxable to the corporation in the town where the property is situated. *Smith v. Burley*, 9 N. H. 423.

See *Cocheco Co. v. Strafford*, 51 N. H. 467.]

## TITLE XVIII. OF ESTATES AND THEIR INCIDENTS.

Ch. 137. Of the conveyance of real estate.

140. Of mortgages and conditional sales of sonal property.

### CHAPTER CXXXVII.

#### Conveyance of Real Estate.

Sec. 2. Corporations may convey by agent.

§ 2. Any public or private corporation authorized to hold real estate may convey the same by an agent appointed by vote for that purpose.

See ch. 148, §§ 8, 21; and note to ch. 149, § 3.

[A vote to authorize an agent of a corporation to convey land must specify the tract to be conveyed, and give some description of it. *Lumbard v. Aldrich*, 8 N. H. 31.]

Agent of a corporation may be appointed to convey real estate by vote, without being authorized by an instrument under seal. *Atkinson v. Bemis*, 11 N. H. 44; *Despatch, etc., v. Mfg. Co.*, 12 id. 205; *Tenney v. Lumber Co.*, 43 id. 355.]

### CHAPTER CXL.

#### Mortgages and Conditional Sales of Personal Property.

Sec. 8. Mortgagor a corporation; affidavit, how made.

21. Notice of sale, how given.

§ 8. When a corporation is a party to such mortgage, the affidavit may be made and subscribed by any director thereof, or by any person authorized by the corporation to make or to receive the mortgage.

See ch. 148, § 9.

[Legislature may authorize a corporation to convey or mortgage their franchises, and all other corporate property. *Richards v. R. R. Co.*, 44 N. H. 127.]

§ 21. The mortgagee shall notify the mortgagor of the time and place of sale, by notice in writing delivered to him or, if a corporation, to the person on whom legal process may be served, or left at his abode, if within the town, at least four days previous to the sale. If the mortgagor does not reside in the town, such notices sent by mail shall be sufficient.

## TITLE XX. OF CORPORATIONS.

Ch. 147. Of voluntary corporations.

148. Of general powers of corporations.

149. Of dividend-paying corporations.

150. Of the individual liability of corporators.

151. Of suits against stockholders.

### CHAPTER CXLVII.

#### Voluntary Corporations.

##### *Formation of Corporation.*

- Sec. 1. Voluntary corporations may be formed, for what purposes.
- Articles of association to contain what.
  - Corporate name, what; how changed.
  - Articles of association, where recorded.
  - Corporate existence begins, when; powers.
  - By-laws, etc., of signers become same of corporation.

##### *Powers of Corporation.*

- Sec. 6. Capital stock; limits and change of.
- Capital stock, increase or decrease of, how effected.
  - Certain corporations; limits of power to hold property.
  - Certain corporations; how to raise money of members.

##### *Dissolution of Corporation.*

- Sec. 10. Dissolution of corporations may be decreed by court, when.
- Corporation to file copy of decree with secretary of State, etc.
  - Corporation to lodge records with secretary of State, when.

#### Formation of Corporation.

Section 1. Five or more persons of lawful age may associate together by articles of agreement to form a corporation, for either of the following purposes:

- The promotion of the cause of temperance and of any charitable or religious cause.
- The establishment and maintenance of literary and scientific institutions, libraries, lyceums, and musical, agricultural, literary, or scientific associations, and the promotion of education and the arts and sciences by any other means.
- The establishment and maintenance of hospitals, homes for the aged and for invalids, and other charitable institutions.
- The provision of suitable grounds and other conveniences for the burial of the dead.
- The organization and maintenance of lodges of Free Masons, Odd Fellows, and other similar societies.
- The provision and care of walks, parks, and commons.
- The planting, cultivation, and protection of shade, ornamental, and forest trees.
- The promotion of agriculture.
- The promotion of the growth and prosperity of cities, towns, and villages.
- The carrying on of any lawful business except banking, life insurance, the mak-



Articles of association; corporate name; by-laws — Stats., ch. cxlvii, §§ 2-6.

ing of contracts for the payment of money at a fixed date or upon the happening of some contingency, and the construction and maintenance of railroads.

Above section is amended by Act of 1895. See p. 26. "Charter" defined. Ch. 2, § 10. Chapter 47 is amended by Act of 1891, at p. 26.

[Private corporation defined. Dartmouth College v. Woodward, 1 N. H. 111; R. R. Co. v. Greely, 17 id. 47; Petition of Road Company, 35 id. 134.]

The charter of a private corporation is a contract which protects the corporation against the public, and its stockholders against the corporation. Union Locks, etc. v. Towne, 1 N. H. 44.

A charter is a contract within meaning of United States Constitution. Piscataqua Bridge v. New Hampshire Bridge, 7 N. H. 35; Backus v. Lebanon, 11 id. 19; Ins. Co. v. Harvey, 45 id. 292; contra, Dartmouth College v. Woodward, 1 id. 132.

No particular form of words in a grant is ever required to constitute a corporation. Bow v. Allenstown, 34 N. H. 352.

Acceptance of charter may be presumed from acts of corporators. Bridge v. Bragg, 11 N. H. 102.

Existence of charter may be presumed from long-continued exercise of corporate powers without objection. New Boston v. Dunbarton, 12 N. H. 409; 15 id. 241.

The legality of organization of a de facto corporation cannot be questioned collaterally. Saunders v. Farmer, 62 N. H. 572; Cong. Soc. v. Perry, 6 id. 164; Ins. Co. v. Moore, 55 id. 48.]

§ 2. The articles of association shall set forth the name of the corporation, the object for which it is established, the place in which its business is to be carried on and the amount of its capital stock, if any; and shall be signed by the persons who associate together to form it, with a designation of the post-office address of each.

Amendment of articles. See Act of 1895, at p. 26.

[No voluntary association will be a corporation until the members subscribe the articles and give the required notice. But a subscription to printed articles will, as it seems, be deemed a sufficient subscription to "written articles." Ins. Co. v. Cram, 43 N. H. 636.]

§ 3. Any corporate name may be assumed which is not in use by any other corporation or company. It shall not be changed except by act of the legislature.

Name may be changed. See Act of 1895, at p. 27.

[A corporation, besides its true name, may have and take a name from reputation. Gospel Soc. v. Young, 2 N. H. 310; School Dist. v. Pillsbury, 58 id. 423.]

If, in the assessment of damages to a corporation, there be a variance from the corporate name, but enough appear to show what corporation is intended, it will be sufficient. Peirce v. Somersworth, 10 N. H. 369.

Variation in corporate name in assessment of taxes held to be immaterial. Souhegan Factory v. McConihe, 7 N. H. 309.

Variation in name held to be material in admission of evidence. Burnham v. Bank, 5 N. H. 446.

If a corporation be sued by a name varying

only in words or syllables, and not in substance, from true name, the misnomer must be pleaded in abatement, otherwise it will not be recorded. But if the name be mistaken in substance, the suit cannot be regarded as against the corporation. Id.

A plea that there is no such corporation in existence as plaintiff is in bar. School Dist. v. Aldrich, 13 N. H. 139.]

§ 4. The articles of agreement shall be recorded in the office of the clerk of the town in which the business of the corporation is to be carried on and in the office of the secretary of State; and when so recorded, and the charter fee required by law, if any, has been paid to the State treasurer, the signers thereof shall be a corporation, and such corporation, its officers and stockholders, shall have all the rights and powers and be subject to all the duties and liabilities of other similar corporations, their officers and stockholders, except so far as the same are limited or enlarged by this chapter.

General powers. Ch. 148, § 3, and notes. Power to make contracts. Id., § 7. To hold property. Id., § 8. To take mortgages. Id., § 9. "Charter" defined. Ch. 2, § 10.

[Corporations have no powers except those given by their charters, or incidental and necessary to carry into effect the purposes for which they were established. Downing v. Road Co., 40 N. H. 230; Greely v. Bank, 63 id. 145.]

The interpretation of a charter is an ascertainment of intention; and question of intention is a question of fact, to be determined on competent evidence. Burke v. R. R. Co., 61 N. H. 160, 192, 233.

The construction of a charter should, if possible, be such that no part will be inoperative, nor the object of the grant defeated. Lebanon v. Olcott, 1 N. H. 339.

Existing statutes to which a charter is in terms made subject are as much a part of the charter as if inserted therein. R. R. Co. v. Nashua, 63 N. H. 593; s. c., 4 Atl. Rep. 298.

The common law gives to all corporations the powers belonging to corporations of their class, if not inconsistent with the nature of the corporation, or the charter, or some general statute. Smith v. R. R. Co., 27 N. H. 86.]

§ 5. Any by-laws adopted and organization effected by the unanimous action of the signers of the articles of agreement before the articles have been recorded as required by the preceding section, not repugnant to the laws of the State, shall be the by-laws and organization of the corporation, and shall remain in force until changed by it.

#### Powers of Corporation.

§ 6. If any such corporation has a capital stock, and its object is a division of profits among its stockholders, the capital stock shall not be less than one thousand nor more than one million dollars; and it may be divided into shares of not less than twenty-five nor more than five hundred dollars each.

Dividend-paying corporations. Ch. 149, § 1 Capital stock. Id., §§ 5-7. Sale and transfer. Id., §§ 13, 14, 15. Assessments upon. Id., §§ 16-18.

Dissolution; corporate powers — Stats., ch. cxlvii, §§ 7-12; ch. cxlviii, §§ 1-3.

§ 7. Whenever any such corporation votes to increase or diminish its capital stock, it shall cause an attested copy of such vote to be recorded in the office of the clerk of the town in which its business is carried on, and in the office of the Secretary of State. The increase or decrease shall not be authorized until such record is made.

See ch. 149, §§ 5-7. Illegal increase of stock, penalty. Ch. 273, § 11. Is above section repealed? See Act of 1895, at p. 26.

§ 8. If a division of profits among stockholders is not an object of a corporation, it shall not hold property exceeding in value the sum of five hundred thousand dollars without special authority from the legislature.

[Power of a corporation to hold and convey real estate cannot be collaterally and inequitably drawn in question. *Saunders v. Farmer*, 62 N. H. 572.]

§ 9. Any corporation whose object is not a division of profits among its stockholders may raise money of its members in any manner provided for in its agreement of association, or in its by-laws.

#### Dissolution of Corporation.

§ 10. Any such corporation, or stockholders owning one-fourth of the stock of the corporation, or, if there be no stockholders, one-fourth of the members of the corporation, may apply by petition to the supreme court, at a trial term in the county in which the corporation is located, for a decree of dissolution, or for such other relief as may be just; and the court, after due notice to all parties interested, and a hearing, may decree that the corporation be dissolved, subject to such limitations and conditions as justice may require.

See ch. 148, § 22. Insolvency proceedings. Ch. 201, §§ 48-50. Forfeiture of franchises. Ch. 240. See Act of 1891, at p. 26.

§ 11. The corporation shall cause an attested copy of the decree of the court to be filed in the office of the secretary of State forthwith after it is made; and when such copy has been so filed, the corporate existence of the corporation shall terminate in accordance with the terms of such decree.

§ 12. The records of a corporation so dissolved shall be lodged with the secretary of State within thirty days after its affairs are closed up, and shall be kept by him as public records.

Corporate records. Ch. 148, §§ 10-14.

#### CHAPTER CXLVIII.

##### General Powers of Corporations.

- Sec. 1. Provisions of title do not apply to public municipal corporations.
2. Incidents of corporations.
3. General powers of corporations.
4. First meeting, how called.
5. Action at first meeting.
6. What by-laws may be adopted.
7. Power to make contracts limited.
8. Power to purchase, hold, and convey property limited.
9. Power to take mortgages.
10. Clerk; choice, residence, and place of office, etc.
11. Duties of the clerk.
12. Records to be open to inspection.
13. Copies to be furnished, when and to whom.
14. Penalty for refusal to furnish copies.
15. Annual meeting may be changed.
16. Loss of meetings, how supplied.
17. Meetings called by justice, how warned.
18. Time to close concerns.
19. Charters may be altered, amended, or repealed; saving clause.
20. Officers to furnish printed reports to State librarian.
21. Foreign manufacturing corporations may hold property in this State, etc.
22. Authority of the supreme court in winding up the affairs of corporations.

Section 1. The provisions of this title do not apply to public municipal corporations, such as towns, cities, and the like.

§ 2. The rights, powers, and duties set forth in this chapter are incident to all corporations legally constituted not excepted in the preceding section, subject to any limitations or restrictions imposed by their charters or articles of association or the laws under which they were organized.

See ch. 147, § 4, and notes.

§ 3. Every such corporation may (1) admit associates and members, and for just cause remove them;

(2) May elect all necessary officers, define their duties, and fix their compensation;

Voting. See ch. 149, §§ 19-26. Directors and officers. Ch. 149, § 3, and note. Corporation bound by officers and agents. See note to subd. (4).

[Ratification of irregular election of officers. *Hughes v. Parker*, 20 N. H. 58.

Persons acting publicly as officers of a corporation are to be presumed rightfully in office. *Hilliard v. Gould*, 34 N. H. 239.

Books of a corporation kept not by sworn clerk, but by one whom he authorizes to sign his name, are not competent evidence to prove election of officers. *Ins. Co. v. Moore*, 55 N. H. 48.

Agents of corporations may be appointed by vote. *Atkinson v. Bemis*, 11 N. H. 44; *Tenney v. Lumber Co.*, 43 id. 355.

The president of a corporation has no implied authority to act as its agent. *Wait v. Armory Assn.*, 66 N. H. 581; s. c., 23 Atl. Rep. 77.

(3) May have a common seal, and change the same at pleasure;

"Seal" defined. Ch. 2, § 11.

[Corporations may adopt any seal for the occasion, notwithstanding they have a common seal. *Flint v. Clinton Co.*, 12 N. H. 430.

## Corporate powers; first meeting — Stats., ch. cxlviii, §§ 3, 4.

And evidence that a deed purporting to be a deed of the corporation was executed by agents, properly authorized, is prima facie evidence that the seal affixed to it has been adopted. *Tenney v. Lumber Co.*, 43 N. H. 343.

It will be presumed, until contrary appears, that the common seal, when affixed to an instrument, has been issued by proper authority. *Id.*

(4) May sue and be sued, appear, prosecute, and defend in the corporate name to final judgment and execution, and appoint agents and attorneys for that purpose;

Corporation may sue stockholder for assessments. Ch. 149, § 17, note. Officer made individually liable for corporate debt may recover from the corporation. Ch. 150, § 22. Insolvency proceedings against a corporation. Ch. 201. Service of writs against a corporation. Ch. 219, §§ 13-16. Attachment. Ch. 220. Levy of executions. Ch. 232, §§ 15-20. Proceedings for forfeiture of franchise. Ch. 240.

[If a corporation be sued by a name varying only in words or syllables, and not in substance, from true name, the misnomer must be pleaded in abatement, otherwise it will not be recorded. But if the name be mistaken in substance, the suit cannot be regarded as against the corporation. *Burnham v. Bank*, 5 N. H. 446.

Variation in name held to be material in admission of evidence. *Id.* A plea that there is no such corporation in existence as plaintiff is in bar. *School Dist. v. Aldrich*, 13 N. H. 139.

He who gives a note to a corporation is estopped in a suit upon the note, to deny existence of the corporation. *Cong. Soc. v. Perry*, 6 N. H. 164; *Ins. Co. v. Moore*, 55 *id.* 48.

Legality and existence of a de facto corporation cannot be collaterally and inequitably drawn in question. *Saunders v. Farmer*, 62 N. H. 572.

In a suit by a corporation, the general issue admits that plaintiffs are a corporation capable of suing. *Concord v. McIntire*, 6 N. H. 527.

Cases in which foreign corporations are sometimes required to produce a charter are exceptions to general rule. *School Dist. v. Blaisdell*, 6 N. H. 197.

A foreign corporation may maintain a suit in this State. *Lumbard v. Aldrich*, 8 N. H. 31; *Educa. Soc. v. Varney*, 54 *id.* 376. And may be sued, at law or in equity, if service can be made according to our laws, or, if without such service, it appear generally by attorney in the suit. *Libbey v. Hodgdon*, 9 N. H. 394; *March v. R. R. Co.*, 40 *id.* 549.

Corporations are subject to same presumptions from their acts and acts of their agents, without either vote, deed or writing, as in case of natural persons. *Currier v. Ins. Co.*, 53 N. H. 551.

As a general rule they have the power to waive their legal rights, and are bound by implications and estoppels in pais, like natural persons. They can claim no exemption from the operation of those rules and maxims which are established to enforce good faith and fair dealing among individuals. *Glidden v. Unity*, 33 N. H. 577.

Not only estoppels so called technically, but estoppels in pais, operate both for and against corporations. *Mfg. Co. v. Canney*, 54 N. H. 323.

In an action against a corporation, plaintiff cannot prove a vote of the corporation by parol, it appearing that it has records, and no notice having been given to produce them. *Haven v. Asylum*, 13 N. H. 532.

Records of a corporation are not evidence unless it appears that they have been kept by the proper corporate officers. *Haynes v. Brown*, 36 N. H. 545.

Books of a corporation admissible as evidence, when. *Wheeler v. Walker*, 45 N. H. 355.

Corporations will be bound by the express promise of their agents and officers acting within

scope of their authority, and a promise may be implied from the acts of their agents as in the case of natural persons. *Eastman v. Bank*, 1 N. H. 23; *Smith v. R. R. Co.*, 27 *id.* 98; *Glidden v. Unity*, 33 *id.* 571; *Bank v. Farmington*, 41 *id.* 33; *Andover v. Kendrick*, 42 *id.* 324.

Ordinarily, an action cannot be maintained by or against a corporation on a purely executory contract which it had no power to make. *Hall v. Paris*, 59 N. H. 71.

In a suit against a corporation, or a proceeding affecting its corporate property, stockholders have no right to notice individually. *Peirce v. Somersworth*, 10 N. H. 369.

A corporation may maintain trespass against a person who injures its property. *Hinsdale Bridge v. Warren*, 6 N. H. 154.

A suit may be maintained by or against any corporation for three years after expiration of its corporate powers, whether they expire by express limitation, or otherwise. *Blake v. R. R. Co.*, 39 N. H. 435.

An injunction will be granted against a corporation and its directors to prevent a breach of trust, or a fraud upon minority stockholders. *March v. R. R. Co.*, 40 N. H. 549.

To prevent a violation of corporate franchises, or a denial of any right growing out of it, for which there is no outward remedy at law. *Id.* A summons is the only process to be issued to a corporation, to appear and answer to an indictment. *Id.*

A stockholder may maintain a bill in equity against a corporation, to prevent the carrying out of an illegal purchase of shares from another stockholder. *Currier v. Slate Co.*, 56 N. H. 262, 271.

No repeal of charter can impair a creditor's remedy against a corporation for previously incurred liability, or affect a pending suit against it. *Blake v. R. R. Co.*, 39 N. H. 435.

It is no objection to maintenance of a bill in equity to compel restoration of property acquired by fraud, that such restoration will cause the dissolution of the corporation. *R. R. Co. v. R. R. Co.*, 50 N. H. 50.

A de facto corporation is liable in an action of assumpsit for hire money, and its members are not individually liable in such an action if they acted in good faith and believed it to be a corporation de jure. *Larned v. Beal*, 65 N. H. 184; s. c., 23 *Atl. Rep.* 149.

Where plaintiffs, in an action against the corporation for services rendered, introduce evidence that they were employed by defendant's president, who assumed to act in its behalf, the admission in evidence of defendant's by-laws to show that the president had no such authority will not work a reversal, as the jury must have been so instructed as a matter of law had the evidence been excluded. *Wait v. Armory Assn.*, 23 *Atl. Rep.* 77.

Where money is loaned to a de facto corporation, supposed at time of loan to be regularly incorporated, the fact that it is not a corporation de jure does not affect its liability nor give lender a right of action against its members as unincorporated persons. *Larned v. Beal*, 65 N. H. 184; s. c., 23 *Atl. Rep.* 149.]

(5) And shall have perpetual succession, unless incorporated or formed for a limited term, or dissolved as provided by law.

Dissolution. Ch. 147, §§ 10-12.

§ 4. Any three of the five grantees first named in the charter of a corporation (unless otherwise provided therein), or any three of the first five signers of the articles of agreement by which a corporation is formed, may call the first meeting of the members or stockholders by giving to each in hand, or leaving at the abode of each, or



by sending through the mails, postpaid, to the post-office address of each, a notice of the time and place of the meeting, seven days at least before the day of meeting. Such meetings may be held without previous notice if all the members or stockholders voluntarily assemble together for the purpose, or it may be so held at a time and place to which they have all agreed in writing.

Regular meetings, time of. § 6, post. Annual. § 15. Failure to hold. § 16. Organization must be within three years. Ch. 149, § 2. Special meeting. Ch. 151, § 4.

[Where a corporation has no officer by whom a new meeting can be called, its powers are suspended or dormant until its reorganization under a new charter, or by a meeting called under the statutes by justice of the peace. *Goulding v. Clark*, 34 N. H. 148.]

§ 5. At the first meeting and adjournments thereof, the members or stockholders shall effect an organization by the choice, by ballot, of a temporary clerk, by the adoption of by-laws, and by the election of officers in accordance with the by-laws and laws of the State. The temporary clerk shall be sworn and shall hold office and perform the duties of clerk of the corporation until a permanent clerk is regularly chosen and qualified.

Voting. Ch. 149, §§ 19-26.

§ 6. Such corporations may adopt by-laws, not repugnant to the laws of this State, to provide for the election, removal, and retiring of members; to fix the times and places of holding meetings and the manner of calling and conducting them; to regulate the number of officers, the manner of choosing them, their tenure of office, and their powers and duties; and to promote the objects of the corporation; and they may alter and amend such by-laws.

See ch. 147, § 5; ch. 149, § 15.

[Power to make by-laws, when not expressly given, is an incident to every corporation. *State v. Ferguson*, 33 N. H. 424.

But if authority be given to make by-laws in certain specified cases, for certain purposes, all others are excepted by implication. *Id.*

The by-laws of a corporation must be proved by production of the by-laws themselves; the testimony of the cashier, what the by-laws are, is inadmissible. *Lumbard v. Aldrich*, 8 N. H. 31.

Those present but not voting upon the question of adoption of a by-law cannot be counted as against its adoption. *Richardson v. Cong. Soc.*, 58 N. H. 187.]

§ 7. They may make contracts necessary and proper for the transaction of their authorized business, and no other; they shall not be capable of binding themselves as sureties or guarantors for others.

See ch. 147, § 4, note.

[He who gives a note to a corporation is estopped, in a suit upon the note, to deny existence of the corporation. *Cong. Soc. v. Perry*, 6 N. H. 164; *Ins. Co. v. Moore*, 55 *id.* 48.

The power to make contracts and contract obligations, as natural persons may, is one of the ordinary incidents of all corporations, unless specially restricted. *Smith v. R. R. Co.*, 27 N. H. 86.

When a contract is unauthorized by a charter, no action can be sustained upon it either by or against the corporation. *Downing v. Road Co.*, 40 N. H. 230.

A corporation cannot ratify a contract made by their agent which they could not lawfully authorize. *Id.*

Legislature may authorize a corporation to convey or mortgage their franchises, and all other corporate property. *Richards v. R. R. Co.*, 44 N. H. 127.

Where money is loaned to a de facto corporation, supposed at the time to be regularly incorporated, the fact that it is not a corporation de jure does not affect its liability nor give lender a right of action against its members as unincorporated persons. *Larned v. Beal*, 65 N. H. 184; *s. c.*, 23 *Atl. Rep.* 149.

Director, as an individual, cannot bind the corporation in the absence of authority from his associates or the corporation. *Ins. Co. v. Upton*, 36 *Atl. Rep.* 366.]

§ 8. They may purchase, hold, and convey real and personal estate necessary and proper for the due transaction of their authorized business, not exceeding the amount authorized by their charter or by statute, and no other.

See ch. 137, § 2; ch. 147, § 8.

[Power of a de facto corporation to hold and convey land cannot be questioned collaterally. *Saunders v. Farmer*, 62 N. H. 572.

A foreign corporation may take and hold land in this State if so empowered in its own State. *Lumbard v. Aldrich*, 8 N. H. 31.

A vote to authorize an agent of a corporation to convey land must specify the tract to be conveyed, and give some description of it. *Id.*]

§ 9. They may take mortgages or pledges or make attachments of any property to secure the payment of debts due to them, and may perfect a title thereto by proper legal proceedings; but they shall sell or dispose of any property so obtained, which they are not authorized to hold, within five years after the title is perfected.

See ch. 140, § 8.

§ 10. Every corporation shall have a clerk, who shall be chosen annually by the stockholders, or in such other manner as the charter or by-laws may prescribe, and shall be and continue an inhabitant of this State and keep his office therein; he shall be sworn to the faithful discharge of his duties, and shall hold office for one year and until his successor is chosen and qualified. In case of vacancy in the office it shall be filled as provided in the by-laws, or, if there be no provision on the subject in the by-laws, it shall be filled by the directors or officers charged with the management of the affairs of the corporation until the next election.

Clerk of corporation; records and accounts; continuance — Stats., ch. cxlviii, §§ 11-19.

§ 11. The clerk shall record all votes and proceedings of the stockholders or members of the corporation, and of the directors or other officers charged with the management of its affairs, so far as required by law; shall keep a record of all instruments and papers required to be recorded in his office, and shall perform all other duties incumbent on him by law or usage or by the by-laws.

See § 14, post; ch. 150, § 13.

[Where there is no legal record of proceedings at a meeting of a corporation, they may be proved by parol. *Ins. Co. v. Moore*, 55 N. H. 48. In an action against a corporation plaintiff cannot prove a vote of the corporation by parol, it appearing that it has no records, and no notice having been given to produce them. *Haven v. Asslum*, 13 N. H. 532.]

The records of a corporation are not evidence, unless it appears that they have been kept by the proper officers of the corporation. *Haynes v. Brown*, 36 N. H. 545.

Books of a corporation admissible as evidence, when. *Wheeler v. Walker*, 45 N. H. 355.

Books of a corporation kept not by sworn clerk, but by one whom he authorizes to sign his name, are not competent evidence to prove election of officers. *Ins. Co. v. Moore*, supra. The clerk cannot delegate the power to sign his name. *Id.*

The records of a bank, when produced by the bank, are not the only competent evidence of the appointment and authority of its cashier, and of deposits made therein; but parol evidence is admissible in proof of those facts. *Concord v. Bank*, 16 N. H. 26.

It is not necessary that the votes of directors or other agents of corporation be recorded, unless recording is required by the charter or by-laws. If not recorded, they may be proved by parol; if they are recorded, they may be proved by record, or by the usual secondary evidence. *Edgerly v. Emerson*, 23 N. H. 555.]

§ 12. All records, accounts, and papers of a corporation shall be open to the inspection of every member and stockholder of the corporation; and such portions thereof as have any relation to an overdue and unpaid demand of a creditor of the corporation or to the collection of any such demand shall be open to the inspection of the creditor and of his attorney.

Records of dissolved corporations. Ch. 148, § 13.

[Parol evidence of the proceedings of a meeting of directors is admissible in case of loss of the records. *Ins. Co. v. Saunders*, 34 Atl. Rep. 670.]

§ 13. The clerk, treasurer, assistant treasurer, or other officer or agent of any corporation having the keeping of any such record, account, or paper, when required by any member or stockholder, or by any such creditor, on payment or tender of the fees allowed by law, shall furnish a certified copy of any record, account, or paper which the party is entitled to inspect.

§ 14. If any clerk, treasurer, assistant treasurer, or other officer, or any agent of a corporation, after demand of such copy and payment or tender of the fees therefor, shall neglect or refuse for seven days to furnish it, he shall forfeit for every offense a sum

not exceeding one thousand dollars, to any member, stockholder, or creditor who shall have demanded such copy.

[See *Robertson v. Kettell*, 64 N. H. 430; s. c., 14 Atl. Rep. 78.]

§ 15. A corporation, at any legal meeting, may alter the time of holding its annual meeting.

See § 4, cross-references.

§ 16. If a corporation shall fail to hold its annual meeting, or if, from any cause, a meeting thereof cannot otherwise be called, the owners of one-twentieth part of the stock or property thereof, or, if the same is not divided into shares, one-twentieth part in number of the members thereof, may apply in writing to a justice of the peace to call a meeting, stating the occasion and purpose thereof.

See § 4, cross-references.

[Where a railroad corporation has failed to hold its annual meeting, a justice of the peace, though a stockholder, may, on application, issue his warrant for such meeting, and be elected chairman, and legally preside at such meeting. *R. R. Co. v. Elliot*, 57 N. H. 397.]

§ 17. The justice shall thereupon issue his warrant to one of the applicants, requiring him to warn a meeting, at a suitable time and place, for the purpose stated in the application, by publishing a copy of the application and warrant; and all business transacted at the meeting in pursuance of the warrant shall be valid.

§ 18. Every corporation whose charter has expired or become forfeited, or whose corporate existence has been terminated in any way, shall nevertheless continue as a body corporate for the term of three years, for the purpose of prosecuting and defending suits by or against it and of gradually closing and settling its concerns and dividing its capital stock and profits, and for no other purpose.

[A suit may be maintained by or against a corporation for three years after expiration of its corporate powers, whether they expire by express limitation or otherwise. *Blake v. R. R. Co.*, 39 N. H. 435.]

The common-law methods of winding up the affairs of an extinct corporation, are not abolished by statutes which allow a limited continuance of some of its powers for special purposes. *School District v. Greenfield*, 64 N. H. 84; s. c., 6 Atl. Rep. 484.

An officer who has seized corporate property on an execution should proceed with the service of the writ, though the corporation expire after such seizure. *Kimball v. Bank*, 20 N. H. 347.]

§ 19. The legislature may at any time alter, amend, or repeal the charter of any corporation or the laws under which it was estab-

Dissolution, etc.; time of organization, etc.—Stats., ch. cxlviii, §§ 20-22; ch. cxlix, §§ 1-3.

lished, or may modify or annul any of its franchises, duties, and liabilities; but the remedy against the corporation, its members or officers, for any liability previously incurred, shall not be impaired thereby.

See Const., pt. I, art. XXIII, and note.

[No repeal of the charter can impair the remedy of a creditor against the corporation for previously incurred liability, or affect a pending suit against it. *Blake v. R. R. Co.*, 39 N. H. 435.]

§ 20. The directors and other officers of all corporations doing business in the State shall transmit to the librarian of the State library copies of all printed reports made by them in relation to the affairs of the corporations, immediately after the same are published.

§ 21. Manufacturing corporations not established by the laws of this State doing business in the State are authorized and empowered to acquire, hold, and convey real and personal property, and shall conform to the laws of the State as to returns and taxation, the same as domestic corporations.

[A foreign corporation has power to take and hold lands in this State. *Lumbard v. Aldrich*, 8 N. H. 31.]

§ 22. The supreme court shall have general powers in equity, upon petition of stockholders holding one-fourth of the stock of any corporation, or, if there are no stockholders, of one-fourth of the members thereof, to decree the dissolution of the corporation, or such other relief as may be just, and may make such final and interlocutory orders, judgments, and decrees for the winding up of their affairs, the payment of their debts, and the distribution of their assets, as justice may require.

Dissolution. Ch. 147, §§ 10-12.

## CHAPTER CXLIX.

### Dividend-Paying Corporations.

#### *Incidents, Organization and Officers.*

- Sec. 1. Incidents of dividend-paying corporations.  
2. Time of organization.  
3. Directors and officers.  
4. Number of directors prescribed.

#### *Capital Stock and Shares.*

- Sec. 5. Capital stock limited.  
6. Capital stock may be increased or diminished.  
7. Number of shares increased or diminished; proviso.  
8. Capital stock, preferences in.  
9. Shares not to be sold below par; proviso.  
10. Certificates of stock, form, and requisites of.  
11. Stockholders to furnish the treasurer, etc., information of their residence, etc.

- Sec. 12. Treasurers, etc., of corporations to keep record of names and residences of stockholders.  
13. Transfer of shares.  
14. Transfers of shares to take effect, when.  
15. Sale of shares to be free.

#### *Assessments upon Shares.*

- Sec. 16. Assessments.  
17. Sale for non-payment.  
18. Notice of sale of shares; conveyance thereof.

#### *Voting.*

- Sec. 19. Right of stockholders to vote limited.  
20. Stockholder to make oath if required.  
21. Executors, etc., and pledgors considered as stockholders.  
22. Voting by proxy limited and regulated.  
23. Proxy to be valid only for one meeting.  
24. No voting upon shares until all assessments due have been paid.  
25. Proxy voting in railroads prohibited, except for females, aged, sick and infirm.  
26. Fraudulent voting, solicitation of proxies, etc., how punished.

### Incidents, Organization and Officers.

Section 1. The rights, powers, and duties set forth in this chapter shall be incident to all corporations having for their object a dividend of profits, hereafter incorporated or formed under the general laws, or whose charters are by law subject to be altered, amended, or repealed, excepting savings banks and building and loan associations, and their officers and members shall be governed by its provisions.

§ 2. Every such corporation shall be organized within three years from the passage of its act of incorporation; otherwise the act shall become void.

§ 3. The business of every such corporation shall be managed by its directors, subject to the by-laws and votes of the corporation, and, under their direction, by such officers and agents as shall be appointed by the directors or by the corporation.

Liability of directors. Ch. 150, §§ 1, 5, 6, 14.  
Summons may be served upon director. Ch. 219, § 13.  
Criminal liability of. Ch. 273, §§ 11-15.  
Election of officers. Ch. 148, § 3, subd. 2, and note.  
Voting. §§ 19-26, post.

[If the whole corporation attempt to exercise powers which, by its charter, are lodged elsewhere, its action upon the subject is void. *Charlestown B. & S. Co. v. Dunsmore*, 60 N. H. 85.]

Directors cannot delegate any portion of their authority that requires exercise of judgment and discretion, unless the authority conferred upon them includes power of substitution in express terms, or by necessary implication. *Gillis v. Bailey*, 21 N. H. 150.

Where an act done at a meeting purports to be the act of the board, it may be presumed to be an act of a majority, until contrary is shown. *Despatch, etc. v. Mfg. Co.*, 12 N. H. 205.

Whether the assent of all the directors, given separately and without consultation, will be valid, quere? *Elliot v. Abbott*, 12 N. H. 556. But it is competent evidence of the concurrence of the board, to show their separate acts of assent. *Tenney v. Lumber Co.*, 43 N. H. 343.



Parol evidence of the understanding of a majority of directors as to the meaning or effect of a recorded vote is not admissible. *R. R. Co. v. Wood*, 61 N. H. 418.

It is not necessary that votes or decisions of directors, or the agents of a corporation, should be recorded by the charter or by-laws. *Elderly v. Emerson*, 23 N. H. 555. If not recorded, they may be proved by parol evidence. *Id.*

Directors are bound to use ordinary care and diligence in management of corporate business, and are answerable to the corporation for ordinary negligence. *March v. R. R. Co.*, 43 N. H. 529.

Directors cannot appropriate corporate assets to purpose not warranted by the charter, without consent of each stockholder; and a court of equity will prevent a perversion of trust by directors, though they may not have been guilty of actual or intentional wrong. *Id.*; *Fisher v. R. R. Co.*, 50 N. H. 210.

A sale of corporate property by trustees, one of whom receives a bribe from purchasers, will be set aside by court of equity. *R. R. Co. v. R. R. Co.*, 50 N. H. 50.

Where there is reason to apprehend mismanagement by directors pending an appeal in equity against them, court will appoint a receiver. *Fisher v. R. R. Co.*, *supra*.

Directors of an insolvent corporation hold its assets for equal benefit of all creditors, and if they are themselves creditors, they are precluded from securing any preference over others. *Smith v. Putnam*, 61 N. H. 632; *Richards v. Ins. Co.*, 43 id. 263.

Directors are presumed, in absence of statute to contrary, to perform their duties gratuitously. *Smith v. Putnam*, *supra*.

Treasurer of a corporation has no authority to pay himself a claim unless it has been proved and its payment authorized by the corporation. *R. R. Co. v. Wood*, 61 N. H. 418.

Director, as an individual, cannot bind the corporation in the absence of authority from his associates or the corporation. *Ins. Co. v. Upton*, 30 Atl. Rep. 366.

**Corporate agents.**—Agents of corporations may be appointed by vote. *Atkinson v. Bemis*, 11 N. H. 44; *Tenney v. Lumber Co.*, 43 id. 355.

The powers of agents of a corporation are necessarily limited to such contracts as the corporation itself can lawfully make. *Downing v. Road Co.*, 40 N. H. 230.

Their powers may be expressed, and to be proved by corporate records, or they may be implied from their official duties, and the usual course of business of the corporation. *Smith v. R. R. Co.*, 27 N. H. 86.

Powers of agents construed. *Despatch*, etc. v. *Mfg. Co.*, 12 N. H. 205; *Gillis v. Bailey*, 17 id. 22; *Martin v. Great Falls Co.*, 9 id. 51; *Deming v. Ry. Co.*, 48 id. 455; *Underhill v. Gibson*, 2 id. 352.

Agents of corporations may be appointed to convey real estate by vote, without being authorized by an instrument under seal. *Atkinson v. Bemis*, 11 N. H. 44; *Despatch*, etc. v. *Mfg. Co.*, *supra*; *Tenney v. Lumber Co.*, 43 N. H. 355.

A promise may be implied against a corporation, from the acts of its agents within their authority, the same as in the case of natural persons. *Glidden v. Unity*, 33 N. H. 577.

Continuous and open exercise of a power by corporate officers presupposes a delegated authority. *Hilliard v. Gould*, 34 N. H. 239.

Declarations of an agent or director are not admissible to prove a dedication of its land for a highway, unless they constitute part of the *res gestae*. *State v. Atherton*, 16 N. H. 204.

A corporation is charged with notice of all facts within knowledge of its authorized agent. *R. R. Co. v. Elliot*, 57 N. H. 397, 437.

The president of a corporation has no implied authority to act as its agent. *Wait v. Armory Assn.*, 66 N. H. 581; s. c., 23 Atl. Rep. 77.]

§ 4. The directors, to be chosen annually by the stockholders, shall not be less than

three, unless otherwise authorized by the charter, and one of them at least shall be an actual resident of this State, if the corporation has any stockholders residing in the State. They shall hold office for one year and until others are chosen and qualified in their stead, and one of them shall be chosen president by the corporation or by the directors as the charter or by-laws may prescribe.

See § 3, cross-references.

[A provision in by-laws which requires directors to be chosen at annual meetings is directory only, and not restrictive. Its observance is not essential to the exercise of power of election. *Hughes v. Parker*, 20 N. H. 58; *Ins. Co. v. Moore*, 55 id. 48.

If a corporation elect a person as director who is ineligible, and permit him to act as such, it will be bound by his acts within scope of authority possessed by a director. *Despatch*, etc. v. *Mfg. Co.*, 12 N. H. 222.

The legality of election of directors cannot be questioned collaterally, but only by direct proceedings instituted for the express purpose of evicting them. *Id.*; *Hughes v. Parker*, *supra*.

Parol evidence of the proceedings of directors' meetings is admissible in case of the loss of the records. *Ins. Co. v. Saunders*, 34 Atl. Rep. 670.]

### Capital Stock and Shares.

§ 5. If the amount of the capital stock of a corporation is not fixed by its charter it shall be fixed and limited by the corporation at its first meeting, and also the number and par value of the shares thereof; but the par value of the shares shall in no case be fixed below twenty-five dollars.

See ch. 147, §§ 6, 7.

§ 6. The corporation, at any meeting called for the purpose, may increase or reduce its capital stock and the number of shares into which it is divided within the limits authorized by law.

See ch. 147, § 7. Fraudulent increase, penalty. Ch. 273, § 11.

[If corporation could "reduce" its capital stock under above section by purchasing shares of stockholders, each stockholder should be allowed to surrender such proportion of his stock as amount of proposed reduction bears to whole capital stock. *Currier v. Slate Co.*, 56 N. H. 262.

A stockholder who does not take his share of an increase of stock cannot complain that those who took the stock gained advantage over him, as his right to take stock may be sold. *Jones v. R. R. Co.*, 30 Atl. Rep. 614.

Right of stockholder to enjoin an issue of stock on ground that a distribution thereof other than that adopted would be more profitable to him. *Id.*

Sufficiency of notice to stockholders of the meeting called to authorize an increase of capital stock. *Id.*

Where a corporation is authorized to increase its capital, and the act does not provide the class of stock to which the increase shall belong, the inference is that it is to be common stock. *Id.*

Where legislature authorized an increase of stock for a certain purpose, the court will not inquire into necessity of the increase. *Id.*

Increase or decrease of shares; certificates of stock; transfers — Stats., ch. cxlix, §§ 7-14.

Increase of capital stock at an annual meeting held unauthorized, without express notice that such increase would be considered. *Jones v. C. & M. R. R.*, 38 Atl. Rep. 120.

Necessity for authorized increase of capital stock is a question for the corporation. *Id.*

Each holder of original stock is entitled to a portion of new stock, and can be deprived of it only with his consent, or by legal process. *Id.*

Directors may vote as stockholders for an increase of capital. *Id.*

§ 7. (As amended April 1, 1893.) Such corporation, by unanimous vote of all the shares represented at any meeting called for the purpose, or by the written consent of all the stockholders filed with the clerk, may increase or diminish the number of its shares, and thereby increase or diminish the par value thereof; but the capital stock shall not be increased or diminished thereby, and the par value of the shares shall not be fixed below twenty-five dollars.

See ch. 147, § 7; ch. 273, § 11.

§ 8. A corporation may divide its capital stock into different classes of shares, giving such preferences in relation to dividends to any class as it sees fit; but the duties and liabilities of its stockholders to creditors of the corporation and to the State shall not be affected thereby.

[Where a corporation is authorized to increase its capital, and the act does not provide the class of stock to which the increase shall belong, the inference is that it is to be common stock. *Jones v. R. R. Co.*, 30 Atl. Rep. 614.

See *Jones v. C. & M. R. R.*, 38 Atl. Rep. 120.]

§ 9. No corporation shall sell or dispose of any of the shares of its capital stock at a price less than the par value thereof, except in sales of shares at auction for non-payment of assessments.

[Above section does not prohibit a corporation from pledging its stock, nor deny to the holder of stock which the corporation has pledged or mortgaged, the right to sell for less than par. *R. R. Co. v. R. R. Co.*, 59 N. H. 385.

Evidence held insufficient to sustain conviction for fraudulent issue of stock. *State v. Moore*, 39 Atl. Rep. 584.]

§ 10. Every stockholder shall be entitled to a certificate or certificates signed by the treasurer or cashier and such other officers of the corporation as the by-laws may prescribe, stating his ownership of the shares belonging to him; but no certificate shall be issued until the par value of the shares mentioned in it has been fully paid to the corporation.

Transfers. §§ 13-15, post. Taxation of shares of stock. Ch. 55, §§ 7-11; ch. 56, §§ 6, 7. Attachment of Ch. 220, § 13. Execution against. Ch. 232, §§ 15-20.

[The proper and usual evidence that a party plaintiff is a stockholder of a corporation is the production and proof of his certificate. *Haynes v. Brown*, 36 N. H. 563.]

§ 11. Every stockholder of a corporation shall inform the treasurer, cashier, or other officer authorized to issue stock certificates, of the place of his residence, and of every change therein, forthwith after the change is made.

§ 12. The treasurer, cashier, or other officer authorized to issue stock certificates of a corporation, shall keep in his office, in books provided for the purpose, a true record of the names and residences of all stockholders of the corporation, of all changes in their residences of which he is informed, of the number of shares owned by each stockholder, of all transfers of shares, and of every certificate issued by him; and shall keep on file all old certificates, transfers, and deeds of shares delivered to him.

[The general rule is that a person whose name appears on corporate books is a shareholder, as such, both as to the corporation and the public. *Vale Mills v. Spalding*, 62 N. H. 605.

Where corporate records show a certain person to be a shareholder, and he acts as such, corporation is estopped to deny that he is a shareholder. *Id.*

The stock-book of a corporation was, under above section, competent evidence on the question of the transfer of stock. *Preston v. Cutter*, 64 N. H. 469; s. c., 13 Atl. Rep. 874.]

§ 13. Shares of stock may be transferred by the proprietor by a writing upon the back of the certificate by him signed, or by a deed under seal; and the purchaser, upon producing and surrendering the former certificate so transferred or the certificate accompanied by such deed, shall be entitled to a new certificate if no liens upon the stock against the former proprietor have attached.

[Shares in corporations are, strictly speaking, chattels, rather in the nature of choses in action; but they may be subject of a contract of sale. *Harris v. Stevens*, 7 N. H. 454.

The purchaser of a share of stock takes the share with all its incidents, of which is the right to receive all future dividends declared on such share. *March v. R. R. Co.*, 43 N. H. 515.]

§ 14. The delivery of a stock certificate to a bona fide purchaser or pledgee for value, together with a written transfer or a deed of the same, or a power of attorney to sell, assign, and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title as against all parties except the corporation; but no such transfer shall affect the right of the corporation to treat the stockholder of record as the stockholder in fact, until the old certificate is surrendered and a new certificate is issued to the person entitled thereto.

[If a party promise to deliver shares in a manufacturing company, it will not be necessary, in order to a valid tender of them, that they should stand in his name and be transferred by him, nor that the transfer to the promisee be recorded before the tender. *Eastman v. Fiske*, 9 N. H. 182.



## Assessment on shares; voting — Stats., ch. cxlix, §§ 15-19.

Shares are goods, wares, or merchandise, within the statute of frauds, or the rules of pleading. *Hotel Co. v. Reddington*, 55 N. H. 386.

A bill in equity will lie to compel the delivery of a certificate of stock to one who has the equitable title. *Hill v. Bank*, 44 N. H. 567.

Equity does not decree specific performance of a contract for the sale of shares in a corporation, unless it appears that the remedy furnished at law for the breach of it is inadequate. *Eckstein v. Downing*, 64 N. H. 248; s. c., 9 Atl. Rep. 626.

A transfer of stock gives the purchaser the same right to compel a refunding of illegal dividends, as that retained by the stockholders who have not sold. *Winsor v. Bailey*, 55 N. H. 218.

The rule of damages in a suit for breach of executory contract to purchase stock would be the difference between the agreed price of the stock and its actual value at time of refusal to take it. *Rand v. R. R. Co.*, 40 N. H. 79.

On the transfer of stock, the delivery will not be complete until an entry of such transfer is made upon stock record, or it be sent to the office for that purpose; and the omission thus to perfect the delivery will be prima facie, and, if unexplained, conclusive evidence of a secret trust, and, therefore, as a matter of law, fraudulent and void as to creditors. *Pinkerton v. R. R. Co.*, 42 N. H. 424.

See *Scripture v. Soapstone Co.*, 50 N. H. 571.]

§ 15. No corporation shall make any by-law to restrain the free sale of shares of its stock; every such by-law shall be void.

See ch. 148, § 6.

[Stock may be bought for such a purpose as to raise a question of right of buyer to employ equitable process for an inequitable object. *State v. R. R. Co.*, 62 N. H. 383.]

## Assessment upon Shares.

§ 16. A corporation, at its first meeting, or at a meeting called for the purpose, may make assessments upon the shares of its stock, not exceeding in the whole the amount at which the shares were originally limited; or such assessments may be made by the directors of the corporation; and the sums assessed shall be paid to the treasurer within the times limited by the corporation or by the directors.

Assessments to pay debts. Ch. 151, § 4.

[Purchaser of shares at a sale on execution is not liable for future assessment if no certificate of stock is called for by him, or issued to him, and stock remains on corporate books in name of the execution debtor who also continues to vote upon it as owner. *Vale Mills v. Spalding*, 62 N. H. 605.

Where by-laws provide for payment of ten per cent. upon subscription, or subscription to become void, it will be voidable only at election of the corporation. *Ferry Co. v. Jones*, 39 N. H. 491.

A subscriber for shares may, by his acts, be estopped from denying the legality of assessments, on ground that all the shares are not taken. *R. R. Co. v. Johnson*, 30 N. H. 390; *Mfg. Co. v. Canney*, 54 id. 295, 315.

Where number of shares is fixed by its charter, which provides that directors may make equal assessments upon all shares, no valid assessment can be made against a subscriber until all shares are taken. *R. R. Co. v. Johnson*, 30 N. H. 390; *R. R. Co. v. Barker*, 32 id. 363.

Under the general statutes a stockholder who has paid full amount of his shares is not liable for assessments made for other purposes than payment of debts. *Starch Co. v. Moore*, 62 N. H. 671.

If charter fixes a limit beyond which shares shall not be assessed, no assessment can be made beyond it. *R. R. Co. v. Copp*, 38 N. H. 124.

Nor is stockholder liable for assessments for objects essentially different from those contemplated by charter. *Union L. & C. v. Towne*, 1 N. H. 44.]

§ 17. If an owner of shares, being present, either in person or by proxy, at the meeting when any assessment is voted, or being notified thereof by the treasurer or cashier by letter, shall neglect to pay the sum so assessed on his shares for thirty days after the time appointed for the payment thereof, the treasurer or cashier may sell at auction a sufficient number of his shares to pay all assessments then due from him, with necessary charges.

[If charter provides no mode for enforcing assessments, except by the sale of shares, assumpsit may be maintained, provided there has been an express promise to pay assessments, but not otherwise. No sale of shares is necessary in case of such an express promise. *R. R. Co. v. Johnson*, 30 N. H. 390.

Assumpsit will lie to recover assessments made for the payments of debts of a corporation. *Mfg. Co. v. Canney*, 54 N. H. 295, 318.

The legislature, in authorizing corporations to make assessments, must be taken to authorize the use of prompt and effectual means to collect same by suits. Id.

Where the subscriber for stock agrees to take only a specified number of shares, without expressly promising to pay assessments, he cannot be personally sued for the assessment until his shares have been sold to pay it. *Rockingham Bldg. Co. v. Burlingame*, 31 Atl. Rep. 23; *Same v. Brown*, id.

Where one subscribes to capital stock, agreeing to pay his subscription at certain times, he may be sued on his agreement, there being no occasion for making assessments under sections 16, 17. *Shoe Co. v. Pray*, 32 Atl. Rep. 770.

Where stock is transferred to a trustee to be issued to stockholders on payment thereof, such fact is no defense to an action on subscription. Id.

Where shares are subject only to a sale for delinquency, and where the original members signed a written obligation to pay all assessments on their shares, it was held that no action lies on such promise, if, before the assessment falls due, the principal, bona fide and for a valuable consideration, sold out his shares, though he afterward bought in the same shares, and after his repurchase the assessments were made. *Glass Co. v. Alexander*, 2 N. H. 380.]

§ 18. The treasurer or cashier shall give notice of the time and place appointed for such sale, and of the sum due on each share, by publishing such notice in some newspaper printed in the vicinity where the corporation is established; and a deed of the shares made by the treasurer or cashier, in accordance with such sale, shall entitle the purchaser to a certificate therefor.

## Voting.

§ 19. Every stockholder in a corporation, except banks whose charters otherwise provide, may give one vote at any meeting thereof for every share he owns therein, not exceeding one-eighth part of the whole number of shares.



Voting by stockholders; liability of corporators — Stats., ch. cxlix, §§ 20-26; ch. cl, §§ 1-3.

§ 20. No person claiming to be a stockholder in his own right shall vote as such until he shall make oath, if required by any stockholder at such meeting, before a justice of the peace, that he is the absolute and bona fide owner of the shares claimed by him.

§ 21. A person holding stock in a corporation as executor, administrator, guardian, or trustee, and a person who has pledged his stock as collateral security, may vote thereon as a stockholder, upon producing, if his right is contested, evidence of his title satisfactory to the presiding officer.

§ 22. Except in railroad corporations, any person not a stockholder, being authorized by a writing under the hand of a stockholder entitled to vote by proxy, filed with the clerk or cashier, may vote as proxy in the right of such stockholder; but no stockholder shall act as proxy for any other stockholder, nor shall any person act as proxy for more than one stockholder, or vote as proxy for shares exceeding one-eighth of the whole capital stock.

§ 23. No proxy shall confer the right to vote at more than one meeting, which shall be named therein.

§ 24. No person shall vote on any shares until all assessments which have been ordered and have become due and payable thereon have been fully paid.

§ 25. Voting by proxy shall not be lawful at a meeting of a railroad corporation, except by female stockholders and by stockholders unable, by reason of sickness, infirmity, or old age, to attend such meeting, each of whom shall make, subscribe, and attach to his proxy an affidavit setting forth his inability to attend for one or more of said reasons. No person at any such meeting shall vote by proxy on shares exceeding in par value the sum of five thousand dollars, nor on a greater number of shares by proxy than are sufficient, with the shares owned and voted upon by himself at such meeting, to make shares amounting to five thousand dollars in par value; nor shall any stockholder authorize more than one person to vote on his shares by proxy at the same meeting.\*

§ 26. If any person shall fraudulently vote upon any share of which he is not the bona fide and absolute owner, except in the cases before provided for, or shall fraudulently procure or receive the transfer of a share for the purpose of voting thereon, or shall directly or indirectly solicit a proxy for any other person to vote upon, he shall be punished by imprisonment not exceeding one year, or by fine not exceeding five hundred dollars, or both.

\* The selectmen of a town may vote upon stock owned by the town, or appoint an agent for the purpose. So provided in Public Statutes, ch. 40, § 18.

## CHAPTER CL.

### Individual Liability of Corporators.

- Sec. 1. Individual liability of officers and stockholders limited.  
 2. Loans to stockholders prohibited.  
 3. Dividends prohibited when property insufficient to pay debts.  
 4. Debts not to exceed half capital, etc.  
 5. Directors individually liable for all violations of three preceding sections.  
 6. Directors absent or objecting exempt from liability.  
 7. Stockholder receiving illegal loan, dividend, etc., individually liable for amount thereof.  
 8. Stockholders liable till amount of capital paid in, and not afterward; proviso.  
 9. Capital stock not to be paid by note of stockholder.  
 10. List of stockholders to be filed with town clerk in May, annually.  
 11. Who are to be deemed stockholders.  
 12. Neglect to return list, punishment of.  
 13. Willful omissions or refusals of clerk, how punished.  
 14. Directors to certify full payment of capital, etc.; penalty for neglect.  
 15. Certificates, etc., where filed by corporation having no place of business in this State.  
 16. Annual return to be made to secretary of State and town clerk, in May; what to contain, etc.  
 17. Blanks to be furnished.  
 18. Abstracts of returns to be laid before general court.  
 19. False certificate.  
 20. Trustees and pledgees exempt.  
 21. Contribution, when to be had; exception.  
 22. Officer liable may recover of the company.

Section 1. The officers and stockholders of corporations whose object is a dividend of profits, except banks, shall be individually liable for the debts and contracts of the corporation, in the cases and to the extent specified in this chapter, and not otherwise.

#### Enforcement of liability. Ch. 151.

[Stockholders are, in general, liable only for corporate debts contracted while they are stockholders. *Chesley v. Pierce*, 32 N. H. 388.

Our statutes make the liability of stockholders, in manufacturing and many other corporations, joint and several for all such debts of the corporation as they are made personally liable to pay, those making them liable as though they were partners, without any act of the corporation. *Erickson v. Nesmith*, 46 N. H. 371.

Payment only of the debts of the corporation, in the cases and to the extent specified in chapter 150, can be enforced against individual stockholders under chapter 151. *Mfg. Co. v. Canney*, 54 N. H. 296.

See *Bridge Works v. Jose*, 59 N. H. 81.]

§ 2. No loan of money shall be made by any such corporation, excepting banks, to any stockholder therein.

§ 3. No dividend shall be made, and no part of the capital stock shall be withdrawn or refunded, to any of the stockholders, when the property of the corporation is insufficient or will be thereby rendered insufficient for the payment of all its debts.

Penalty. Ch. 273, § 11.

Excessive indebtedness; liability of stockholders, etc.—Stats, ch. cl, §§ 4-14.

[A purchase of its own stock by an insolvent corporation is in fact a "refunding" to him in violation of above section. *Currier v. Slate Co.*, 56 N. H. 262.]

A bill by part of stockholders to compel a refunding to the corporation of all money illegally received as dividends by defendants, should be in behalf of plaintiffs and all others who may come in and join in the suit. *Winsor v. Bailey*, 55 N. H. 218.

In such a bill all persons receiving such illegal dividends are properly joined as defendants. *Id.*

In general, any dividend of the income or profits of the corporation among its shareholders, whether declared as a regular dividend, an extra dividend, or a bonus, goes to the tenant for life. *Lord v. Brooks*, 52 N. H. 72.]

§ 4. No corporation, banks and insurance companies excepted, shall contract debts or incur liabilities exceeding one-half the value of its property.

[Section construed. *Bank v. Fiske*, 62 N. H. 180.]

§ 5. If a corporation, by vote or by its officers, shall violate either of the provisions of the three preceding sections, the directors shall be individually liable, to the amount of such loan, dividend, or sum refunded or withdrawn, or of the excess of debts and liabilities above half the value of its property, for the debts and contracts of the corporation then existing or contracted while they remain in office.

[See *Bridge Works v. Jose*, 59 N. H. 81; *Bank v. Fiske*, 60 id. 363; *Same v. Same*, 62 id. 178.]

§ 6. If a director, being absent at the time of the acts done in violation of the foregoing provisions, shall not have advised or consented thereto, or, being present, shall have objected thereto and filed his objection in writing with the clerk, at the time, he shall be exempt from such liability.

§ 7. A stockholder who shall unlawfully receive a loan from the corporation, or a sum unlawfully withdrawn or refunded from the capital stock thereof, or who shall knowingly accept or receive a dividend unlawfully made, shall, to the amount by him received, be individually liable for the debts of the corporation then existing, or afterward contracted, until the same is repaid, or paid to the creditors of the corporation.

§ 8. Every stockholder, except stockholders in banks and railroads, shall be liable for all debts and contracts of the corporation until the whole amount of the capital fixed and limited by the corporation shall have been paid in, and a certificate thereof, under oath, signed by the treasurer and a majority of the directors, has been filed and recorded by the clerk of the city or town where such corporation has its principal place of business, and not afterward, except in the cases specified in the preceding section. Stockholders in railroads shall be liable only to the amount of the par value of their stock therein and not otherwise.

Liability, how enforced. Ch. 151.

[Stockholders are not liable for debts contracted before they became stockholders. *Chesley v. Pierce*, 32 N. H. 388.]

In absence of fraud or collusion on part of plaintiffs bringing suit against stockholders under above section, it is immaterial whether the debt for which the suit was brought was or was not beyond the power of the corporation to contract. *Bank v. Fisk*, 60 N. H. 363.

If corporation received and used plaintiff's money, it is also immaterial whether the debt was contracted by officers properly authorized, or not. *Id.*

§ 9. No note or obligation given by a stockholder, whether secured by pledge or otherwise, shall be considered as payment of any part of the capital stock.

[If a bank goes into operation on the capital in which a note is reckoned as a cash payment for stock, the illegality of the transaction cannot be set up in defense of an action by the bank on the note. *Bank v. Hodsdon*, 46 N. H. 114.]

§ 10. The treasurer of every railroad corporation and the clerk of every other dividend-paying corporation, except banks, until its capital stock is fully paid in and a certificate thereof filed and recorded, shall annually, in the month of May, cause to be filed and recorded in the office of the clerk of the town or city in which the corporation has its principal place of business, a list of the names and places of residence of all its stockholders, certified under oath.

§ 11. Any person whose name shall be returned on the list shall be deemed a stockholder in the corporation until he shall cause to be filed and recorded by the town clerk a certificate of the transfer of all his stock, the time of such transfer, and the names and places of residence of the persons to whom he sold, signed by the treasurer or clerk of the corporation, which certificate shall be made and delivered to him by such treasurer or clerk upon request, at any time after the transfers are delivered to him for record.

§ 12. If any such treasurer or clerk shall neglect to make such return in the month of May, annually, he shall forfeit for each neglect fifty dollars to any person who will sue for the same: and it shall be the duty of the town or city clerk forthwith to commence a suit therefor.

§ 13. If any treasurer or clerk of the corporation shall willfully omit or refuse to return the list or to deliver to any stockholder such certificate, with intent to delay or defraud any stockholder or creditor of the corporation, he shall be fined not exceeding five thousand dollars, or be imprisoned not exceeding three years, or both.

§ 14. The directors and treasurer of every corporation, except banks, whose object is a dividend of profits, within thirty days after the whole amount of the capital stock fixed and limited by the corporation shall have been paid in, shall make and subscribe a certificate, under oath, of that fact and cause it to be recorded in the office of the clerk



Annual returns; false certificates, etc.—Stats., ch. cl, §§ 15–22; ch. cli, § 1.

of the city or town where the corporation has its principal place of business; and if they neglect so to do, they shall be liable for all the debts of the corporation contracted after the expiration of the said thirty days and before such certificate shall be so made and recorded.

§ 15. If any such corporation has no place of business in this State, all certificates and other papers required by law to be filed or recorded in the town clerk's office shall be so filed or recorded in the office of the secretary of State.

§ 16. Every such corporation, except insurance companies, railroad corporations, banks, and loan and building associations, shall annually, in the month of May, make a return in writing, signed by and under oath of its treasurer and a majority of its directors, to the secretary of State and to the clerk of the town in which its principal business is carried on, if in this State, of the amount of all assessments voted by the corporation and actually paid in, the amount of all debts due to and from the corporation, and the value of all the property and assets of the corporation, so far as the same can be ascertained as existing on the first day of May; and if any such corporation shall fail so to do, the treasurer and directors shall be individually liable for all the debts and contracts of the corporation then existing, or which shall be contracted, until the return is made.

§ 17. The secretary of State shall seasonably furnish suitable blanks for such returns to the several corporations required to make the same.

§ 18. The secretary of State shall annually, in the month of December, prepare a full and true abstract of the annual returns of all corporations required by law to be made to him, and shall cause the same to be printed, and to be laid before the general court at the biennial sessions thereof.

§ 19. If any certificate, return, or notice made or given in pursuance of the provisions of this chapter shall be false in any material representation, all the officers who signed the same, knowing it to be so or without due inquiry, shall be individually liable for all the debts of the corporation contracted while they were in office.

§ 20. No person holding stock as executor, administrator, guardian, or trustee, and no person holding stock as collateral security, shall be thereby personally subject to any liabilities as a stockholder; but the person pledging the stock shall be so liable, and the estate and funds in the hands of such executor, administrator, guardian, or trustee shall be liable to the same extent as a holder thereof in his own right would be liable.

§ 21. Any stockholder who has voluntarily paid a debt or liability of a corporation, after demand for payment thereof, which he was

legally holden to pay, may have contribution by a bill in equity against the other stockholders for such sum as he ought equitably to recover; but no director, officer, or stockholder who advised or consented to any act in violation of the provisions of this chapter shall recover against any stockholder who did not advise or consent thereto.

[Under the prohibition of sections 21 and 22, a stockholder to whom the corporation became immediately and originally indebted in excess of statutory limit cannot recover against stockholders who did not consent thereto. *Bank v. Fiske*, 62 N. H. 180.

Nor can a director acquire any claim against the stockholders by paying a judgment against him as indorser of a corporate note issued with his consent in excess of such limit. *Id.*

Where a bill in equity is brought against the stockholders of a corporation for the purpose of charging them personally, upon their individual liability, for the debt of the corporation, an equitable contribution is to be made by the court between all the stockholders as far as may be. *Erickson v. Nesmith*, 46 N. H. 371.

The members of a corporation de facto are not liable individually in an action of assumpsit for money loaned to the corporation if they acted in good faith, believing themselves to be a corporation de jure. *Larned v. Beal*, 65 N. H. 184; s. c., 23 Atl. Rep. 149.]

§ 22. Any officer of a corporation who shall have paid a debt or liability of the corporation for which he is made liable by the provisions of this chapter, may recover the amount so paid in a bill against the corporation, but he shall have no claim against the stockholders individually therefor.

## CHAPTER CLI.

### Suits against Stockholders.

- Sec. 1. Bill in chancery only remedy against stockholders.
2. Not to be filed until sixty days after legal demand on corporation.
3. Officers and stockholders, upon demand, to pay debt or expose property; if property exposed, no suit.
4. Failing to do either, meeting of stockholders to be called; penalty for not calling.
5. Suits against bank stockholders regulated.

Section 1. The only remedy to enforce the payment of a debt of a corporation against the individual stockholders thereof shall be a bill in chancery.

#### Individual Liability. Ch. 150.

[In a suit by a creditor of a corporation against a stockholder, it is not necessary for plaintiff to show that organization of corporation was legal. That is a matter between the corporation and the State. *Haynes v. Brown*, 36 N. H. 545.

In an action under the statute, to recover from an individual stockholder a debt due from a corporation, the declaration must contain a special averment that defendant had notice, before suit, of neglect of corporation to pay debt, or to expose sufficient personal property within sixty days after demand. *Hicks v. Burns*, 38 N. H. 141.

The demand must be upon some officer or agent authorized to pay the debts of the corporation, and be made at his office or usual place of business, during business hours. *Harvey v. Chase*, 38 N. H. 272.



Creditors' bills against stockholders, etc.—Stats., ch. cli, §§ 2-5, ch. clxxx, §§ 14, 15.

It may be made upon the directors, or either of them. Id.

And a verbal demand may be made in the terms of a written one. Id.

The demand should be made personally by the creditor or his agent, who should exhibit, or verbally and specifically state, the character of the claim, and request immediate payment. It is not sufficient to serve upon the officer a written demand for payment. *Haynes v. Brown*, 36 N. H. 545.

If copies of notes or claims demanded are presented, it is not necessary to present the originals, unless called for at that time. Id. The claims of several persons may be joined in the same demand. Id.

Where creditors write to the treasurer, demanding payment, and treasurer, acknowledging receipt of letter, says he cannot pay because he has no funds, the demand is sufficient. *Bank v. Fiske*, 60 N. H. 363.

A bill in equity under above section against stockholders is not multifarious, because some creditors are joined as plaintiffs who do not appear to prosecute suit. Id. It must be against all stockholders liable for the same debt. *Hadley v. Russell*, 40 N. H. 109.

The nature of the bill, whether for the enforcement of personal liability, or the stockholders' bill prosecuted in the name of the creditors, should distinctly appear. *Towne v. Starch Co.*, 62 N. H. 694.

Where a bill in equity is brought, an equitable contribution is to be ordered between all stockholders who have been properly made parties, or over whom the court by service of process or voluntary appearance acquires jurisdiction. *Erickson v. Nesmith*, 46 N. H. 371.

Fact that some stockholders are non-residents will not deprive the creditor of his decree of the whole debt against those over whom the court has jurisdiction. Id. If some of those within the State are insolvent, plaintiff may have his decree for the whole debts against those who are solvent, to be apportioned pro rata. Id.]

§ 2. No bill shall be filed until sixty days after a legal demand of payment of the debt whose payment is sought to be enforced shall have been made upon the corporation.

See note to preceding section.

§ 3. Whenever payment of a debt of a corporation shall be legally demanded, it shall be the duty of the officers and stockholders thereof forthwith to pay and discharge the same with the funds of the corporation, or to expose unincumbered personal property of the corporation sufficient to satisfy the same with costs of suit, so that it may be attached in a suit of the creditor against the corporation; and if such property be thus exposed, no suit shall be maintained against the stockholders.

See note to § 1, ante.

§ 4. Upon demand of payment of a debt of a corporation being made, if the same shall not at once be paid, or unincumbered personal property sufficient to satisfy it be exposed, the officers of the corporation shall forthwith call a meeting of the stockholders to provide means for its payment, by assessments upon themselves or otherwise, within sixty days from the date of the demand. If an officer whose duty it may be to call such meeting shall unreasonably neg-

lect or refuse to call the same, he shall forfeit one thousand dollars, to be recovered in an action of debt by any person injured.

See note to § 1, ante.

[Assumpsit will lie to recover assessments made for the payment of debts of a corporation. *Mfg. Co. v. Canney*, 54 N. H. 295, 318.]

§ 5. In a suit against the stockholders of a bank or banking association for the non-payment of its bills, the bill shall be so framed as to embrace all bank bills holden by the creditor at the time of its being filed; and averments that such bills were issued from and put in circulation by the bank or banking association, that the plaintiff was at the time of demand of payment and still is the holder thereof, and a general statement of the number and denominations of the bills, shall be sufficient setting forth of the liability of the bank or banking association to pay or redeem the bills, and a sufficient description of them; and the stockholders may be described in the bill as such, by their names and places of residence, without further description or addition.

#### TITLE XXIV. OF THE DOMESTIC RELATIONS.

##### CHAPTER CLXXX.

##### Of Masters, Apprentices, and Laborers.

- Sec. 14. Women and minors under eighteen not to be employed over ten hours a day; exceptions.
15. Notice of hours of labor to be kept posted.
16. Penalty for violation of preceding sections.
17. Certificate of age of minor conclusive evidence, when.
18. Penalty for false certificate.
19. Fines, to whose use; limitation of action.
20. What constitutes a day's labor.
21. Weekly payment of wages.
22. Penalty.
24. Labor day.

§ 14. No woman and no minor under eighteen years of age shall be employed in manufacturing or mechanical establishment for more than ten hours in one day, except in the following cases:

1. To make a shorter day's work for one day in the week.

2. To make up time lost on some day in the same week in consequence of the stopping of machinery upon which such person was dependent for employment.

3. When it is necessary to make repairs to prevent interruption of the ordinary running of the machinery.

In no case shall the hours of labor exceed sixty in one week.

§ 15. The proprietors of every such establishment shall keep posted in a conspicuous place in every room where such persons are employed a notice printed in plain, large letters, stating the exact time of beginning

Employees; insolvency proceedings — Stats., ch. clxxx, §§ 16-24; ch. cci, §§ 48-50.

and of stopping work in the forenoon and in the afternoon, and the number of hours' work required of them each day of the week.

§ 16. If any owner, agent, superintendent, or overseer of any such establishment shall willfully violate the provisions of either of the two preceding sections, he shall be fined not exceeding fifty dollars for each offense.

§ 17. A certificate of the age of a minor, made by him and by his parents or guardian and presented to the employer at the time the minor is employed, shall be conclusive evidence of his age upon a prosecution for the violation of the provisions of section fourteen.

§ 18. If any person shall make and utter a false certificate in regard to the age of a minor, with intent to evade the provisions of this chapter, he shall be fined twenty-five dollars, or be imprisoned thirty days, or both, for each offense.

§ 19. All such fines shall be one-half for the use of the complainant, and the other half for the use of the county. Prosecutions under sections sixteen and eighteen shall be barred unless begun within one year after the offense was committed.

§ 20. In all contracts relating to labor, ten hours' actual labor shall be taken to be a day's work unless otherwise agreed by the parties.

§ 21. Every manufacturing, mining, quarrying, stone-cutting, mercantile, horse-rail-road, telegraph, telephone, express, aqueduct, and municipal corporation employing more than ten persons at one time shall pay the wages earned each week by their employes who work by the day or week within eight days after the expiration of the week, or upon demand after that time. Every such corporation shall post a notice in a conspicuous place in its office that it will pay its employes' wages as above, and shall keep the same so posted.

§ 22. If any such corporation shall violate the provisions of the preceding section, it shall be fined not more than twenty-five dollars for each offense, provided a prosecution therefor is begun within thirty days after the offense is committed, but not otherwise.

§ 24. The first Monday of September of each year shall be a holiday, to be known as Labor day.

## TITLE XXVI. INSOLVENCY PROCEEDINGS.

### CHAPTER CCI.

#### Insolvency Proceedings.

Sec. 48. Insolvency of corporations.

49. Oath to be taken by officers of.

50. Penalty for fraud.

§ 48. Insolvent corporations created by the laws of this State, except banking and rail-

road corporations, may make assignments or be proceeded against in insolvency in the same manner as individuals, and the judge for the county where the principal place of business of the corporation is located may issue his warrant and proceed as in other cases. The schedule shall be furnished by the treasurer or other financial officer of the corporation, and all the provisions of this chapter which apply to the debtor, or set forth his duties in regard to executing papers, submitting to examinations, disclosing, making over, secreting, concealing, conveying, assigning, paying, or conveying away his money or property, shall in like manner and with like force and effect and penalties apply to each and every officer of the corporation and to the money and property thereof.

Voluntary dissolution. Ch. 147, §§ 10-12.

[Directors of an insolvent corporation hold its assets for equal benefit of all creditors, and if they are themselves creditors they are precluded from securing any preference over others. *Smith v. Putnam*, 61 N. H. 632; *Richards v. Ins. Co.*, 43 id. 263.]

§ 49. At the end of three months from the beginning of the proceedings, the officers shall severally make and subscribe an oath in substance as follows:

"I, . . . . ., (president, etc., or treasurer, etc.,) do swear that I believe the account of the creditors of the corporation contained in the schedules signed by . . . . . and now on file in court, is in all respects just and true; that I do believe that all the property and estate of said corporation, and all its books of account and papers, have been delivered to the messenger or the assignee; and that if any goods or estate not so delivered hereafter come to my knowledge, I will faithfully and diligently apprise the assignee thereof. And I do further swear that to the best of my knowledge, information, and belief, there is no part of the estate or effects of the corporation made over or disposed of in any manner in fraud of the laws relating to insolvency or of the creditors of the corporation."

§ 50. If a debtor, or any officer of a corporation against which a petition in insolvency is pending, shall willfully omit to file a list or schedule as ordered, or shall willfully and fraudulently give false information or neglect to give true information to the assignee in relation to the estate or the claims of creditors, or to do any act or to furnish or discover any evidence in his power or knowledge material to the just settlement of the estate, he shall be punished by imprisonment not exceeding one year.

Service of writs, etc.—Stats., ch. cexix, §§ 13–16; ch. cexx, §§ 13, 15; ch. cexxxii, §§ 15–17.

#### **TITLE XXIX. OF ACTIONS, PROCESS, AND SERVICE OF PROCESS.**

- Ch. 219. Of the service of writs.  
220. Of attachments.

#### **CHAPTER CCXIX.**

##### **Of the Service of Writs.**

- Sec. 13. Against other corporations, on whom service to be made.  
14. Against railroad corporations, may be served on ticket master.  
15. Against manufacturing corporations, copy may be left at office or counting room.  
16. Hour of service to be returned on trustee process against corporations.

§ 13. Service of writs against other (than municipal, etc.) corporations may be made upon the clerk, treasurer, cashier, or one of the directors, trustees, or managers, if any in the State; otherwise upon any principal member or stockholder, or upon any agent, overseer, or other person having the care of any of the property or charge of any of the business of the corporation.

Trustee process. Ch. 245.

[Although property of a corporation is attached, service by the leaving of a summons, as in case of an individual, is insufficient; the service must be made by copy. *Sleeper v. Assn.*, 58 N. H. 27.  
A summons is the only process to be issued to a corporation to appear and answer indictment. *R. R. Co. v. State*, 32 N. H. 215.]

§ 14. Service of writs against a railroad corporation may be made upon any person doing the business of the corporation as ticket master for the sale of passenger tickets, at any station upon its railroad.

§ 15. Service of a writ against a manufacturing corporation may be made by leaving an attested copy of the writ at the office or counting room of the corporation.

[Such service should be made by copy, twenty-eight days before sitting of the court to which it is returnable; and if made by summons, the action will be dismissed. *Sleeper v. Baptist Assn.*, 58 N. H. 27.]

§ 16. In the return of service of trustee process against a corporation, the officer shall set forth the hour when the copy was given or left.

#### **CHAPTER CCXX.**

##### **Attachments.**

- Sec. 13. Shares in corporations attached by copy left with treasurer, etc., and dividends holden.  
15. Right to take tolls, by copy left with treasurer, etc.

§ 13. The share or interest of any person in a corporation may be attached by the officer, by leaving an attested copy of the writ and of his return thereon with the clerk, treasurer, assistant treasurer, cashier, agent, or person having the care of the

property of the corporation, or at his abode; and the dividends becoming due afterward shall be holden by such attachment.

Levy of execution against shares. Ch. 232, §§ 15–20.

[A corporation attaching stock is not chargeable with the knowledge of a transfer possessed by one of its directors who takes no part in causing, and is not informed of, the attachment. *Buttrick v. R. R. Co.*, 62 N. H. 413.]

§ 15. The franchise of a corporation authorized to receive tolls, so far as relates to the right to receive tolls, with all the privileges and immunities belonging thereto, may be attached by leaving an attested copy of the writ and of the officer's return thereon with the clerk, treasurer, or a director of the corporation.

#### **TITLE XXXI. OF EXECUTIONS.**

#### **CHAPTER CCXXXII.**

##### **Levy of Executions on Personal Property.**

- Sec. 15. Shares in capital of corporations may be seized, etc.  
16. Notice of sale to be given to debtor and posted.  
17. If debtor not resident of county, notice published and posted sufficient.  
18. Copy of execution and return to be filed with clerk, etc., of corporation.  
19. Officers of corporations to exhibit records, etc., to officer having execution.  
20. Penalty for neglect, etc.

§ 15. The shares or interest of a person in any corporation may be taken on execution, in the same manner that they may be attached.

Attachment of shares. Ch. 220, § 13.

[Purchaser of shares at a sale on execution is not liable for future assessments if no certificate of stock is called for by him, or issued to him, and stock remains on corporate books in name of the execution debtor who also continues to vote upon it as owner. *Vale Mills v. Spalding*, 62 N. H. 605.

A creditor levying an execution upon shares in a corporation is not affected by a mortgage of which he has no notice. *Piper v. Hilliard*, 58 N. H. 198.

An officer, who has seized corporate property on an execution, should proceed with the service of the writ, though the corporation expire after such seizure. *Kimball v. Bank*, 20 N. H. 347.  
See, also, *Jones v. R. R. Co.*, 32 N. H. 544; *Piper v. Hilliard*, 52 id. 209.]

§ 16. Notice in writing of the time and place of sale of such shares or interest shall be given by the officer to the debtor, or shall be left at his abode, and shall be posted at one or more public places in the town where the sale is to be, and in two adjoining towns, thirty days before the sale.

§ 17. If the debtor does not reside in the county, the posting of such notice as prescribed in the preceding section, and the publishing such notice in some newspaper, if any, in the county, otherwise in an ad-



joining county, three weeks previous to the sale, shall be sufficient, without further notice to the debtor.

§ 18. The officer shall cause an attested copy of the execution and of his return thereon to be filed with the clerk, treasurer, assistant treasurer, or cashier of the corporation, and shall pay for the recording thereof. The purchaser shall thereupon be entitled to such shares or interest, and the income or dividends which have become due thereon since the attachment, and to such certificates as are the usual evidence of the shares or interest of a proprietor in the corporation.

[Where, upon a sale upon execution of shares of stock, a certificate is demanded of the corporation by the purchaser, a suit is brought for refusing to give the same, the measure of damages is the valuation of the stock at time of demand, with interest, and not valuation at time of trial, or at any intermediate period. *Pinkerton v. R. R. Co.*, 42 N. H. 424.]

§ 19. The officer of every corporation having the care of the records or accounts of the shares or interests of the corporators therein, shall, on request and on the exhibition of a writ of attachment or execution against any person interested in the corporation, give to the officer having the writ a certificate of the number of his shares or amount of his interest therein, with the numbers of the shares or other description by which they are distinguished. If he shall neglect or refuse to give such certificate, or shall willfully give a false certificate, he shall be liable to pay to the creditor the whole amount of his demand against the debtor, to be recovered by an action of debt.

[Under above section, an officer having the right of execution against the owner of shares, may demand of the proper officer certificate of the number of shares, etc., belonging to the debtor. *Fiske v. Gowing*, 61 N. H. 431.]

§ 20. If any officer of a corporation shall, on request of an officer and on exhibition of such writ of attachment or execution, refuse or neglect to exhibit to him such records and documents in his keeping as may be useful to direct, and assist him in the discharge of his duty, he shall forfeit twenty dollars to the officer, and shall be answerable for all damages sustained by any person thereby.

#### TITLE XXXII. OF PROCEEDINGS IN SPECIAL CASES.

- Ch. 240. Of the forfeiture of grants.  
245. Of the trustee process.

#### CHAPTER CCXL.

##### Of Forfeiture of Grants.

- Sec. 1. Word "grant" to include charters, etc., and acts conferring rights not common to all.  
2. Word "grantee" to include all having grantee's right.

- Sec. 3. Proceedings for forfeiture may be by information or petition, etc.  
4. If by petition, bond to pay costs to be filed.  
5. Service and notice of pendency as in actions by writ or summons.  
6. If grantee does not appear, court to hear evidence, etc.  
7. Several defendants may plead severally.  
8. If condition found not fulfilled, grantee may file reasons why in equity no forfeiture.  
9. If condition not performed, but in equity no forfeiture, grantee to pay costs.  
10. If forfeiture ought in equity to be decreed, judgment.  
11. Copies to be sent to secretary of State, if judgment of forfeiture.  
12. If defendant prevails, to recover costs, except against State.  
13. Grant may be forfeited for non-performance of condition, express or implied.  
14. On judgment of forfeiture grant void, etc.

Section 1. The word "grant" in this chapter includes all grants or charters of lands made by the supreme executive or legislative power of the State, and all acts of incorporation and laws giving to individuals powers or rights not common to all citizens.

§ 2. The word "grantee" in this chapter includes the person or corporation to whom a grant is made, and all persons having the right of such person or corporation therein.

§ 3. Proceedings for obtaining a decree of the forfeiture of such grant may be by information, filed in the supreme court at a trial term by the attorney-general or other person authorized in behalf of the State;  
\* \* \*

[The State alone can enforce a forfeiture of a charter, and the question of forfeiture cannot be raised in an action brought by the corporation. *State v. Carr*, 5 N. H. 367; *Peirce v. Somersworth*, 10 id. 360; *Bridge v. Fisk*, 23 id. 171.

A forfeiture may be waived; if legislative acts recognize the continued existence of the corporation after the forfeiture, such recognition is a waiver. *State v. Turnpike*, 15 N. H. 162.

It is not good exception, to an information in nature of quo warranto, that it is against the stockholders, instead of a corporation, and that it does not ask for a forfeiture of the charter. *State v. Barron*, 57 N. H. 498.

It is no objection to maintenance of a bill in equity to compel the restoration of property acquired by fraud that it will cause the dissolution of a corporation. *R. R. Co. v. R. R. Co.*, 50 N. H. 50.

Forfeiture of a grant can only be taken advantage of by the grantor, and cannot be inquired into collaterally. *Dewey v. Williams*, 40 N. H. 222.]

§ 4. The petitioner shall file with the clerk a bond to the State, in a reasonable sum, with sufficient sureties, conditioned to pay all costs which may be adjudged against him.

§ 5. If the land to which the proceedings relate is in different counties, the proceedings may be in either, and the order of notice upon the information or petition shall be that the grantee appear and show cause why the grant should not be decreed forfeited.

§ 6. Service of the petition or information and order may be made as required in ac-

Forfeiture of grants, etc.—Stats., ch. ccxi, §§ 7-12, 18-20; ch. cclxxiii, § 11.

tions begun by writ of summons. If such service is not practicable, service may be made by publication, or in such other manner as the court may order.

§ 7. If the grantee does not appear upon such service or notice, the court shall hear the evidence, and adjudge whether the grant is forfeited.

§ 8. If several persons claim under the same grant, they may appear and plead severally.

§ 9. If it is found by the jury or by the court that the conditions of the grant have not been performed, the grantee may in writing allege reasons why the forfeiture ought not in equity to be enforced, and the court, upon consideration thereof, shall determine whether, in equity and good conscience, a decree of forfeiture should be made.

[See *State v. Barron*, 57 N. H. 498.]

§ 10. If they decide that such decree ought not in equity to be made, the judgment shall be that the grant is not forfeited, for the reasons in equity assigned, and that the grantee pay the costs of suit.

§ 11. If they decide that the decree of forfeiture ought to be made, the judgment shall be that the grant is forfeited.

§ 12. Whenever such judgment is rendered on information filed in behalf of the State, the clerk shall, within thirty days, transmit to the secretary of State attested copies of the judgment, and all papers in the case, which shall be filed in his office and laid before the general court at their next session.

§ 18. If the defendant prevails in the suit, he shall recover his costs of the person by whom it is prosecuted, unless authorized to prosecute the same in behalf of the State.

§ 19. Any grant may be adjudged forfeited for the non-performance of any condition annexed to or contained therein, whether such condition be expressed or implied.

[Neglect by a corporation to hold meetings for a period of ten years will not operate to dissolve it. *State v. Barron*, 58 N. H. 370.

Insolvency of a corporation, and fact that it has assigned all its property to an assignee for benefit of its creditors, do not extinguish its legal existence, nor does its failure to elect officers or to hold meetings for many years. *Parsons v. Powder Works*, 48 N. H. 66.]

§ 20. Whenever a grant is adjudged forfeited, the grantee is divested of all rights, powers, and privileges under it; and it shall be thenceforth void.

[No repeal of the charter can impair the remedy of a creditor against the corporation for previously incurred liability, or affect a pending suit against it. *Blake v. R. R. Co.*, 29 N. H. 435.

An officer, who has seized corporate property on an execution, should proceed with the service of the writ, though the corporation expire after such seizure. *Kimball v. Bank*, 20 N. H. 347.]

## CHAPTER CCXLV.

### Trustee Process.

Sec. 1. Personal actions, except replevin, trespass to person, etc., may be brought by trustee process.

13. If corporation or partnership summoned, deposition of officer, agent or member to be taken.

14. Proceedings in such case as in case of an individual.

Section 1. Any personal action may be begun by trustee process, except actions of replevin and trespass to the person, and actions for defamation and malicious prosecution.

Service of process. Ch. 219, §§ 13-16.

§ 13. If a corporation or partnership is summoned as trustee, the deposition of the cashier, treasurer, or other proper officer or agent of the corporation, or of a member of the partnership, may be taken as the deposition of the trustee.

[A foreign corporation may be held as trustee, under the Foreign Attachment Law of this State. *Llibbey v. Stage Co.*, 9 N. H. 394.

An action brought by citizens of this State against a foreign corporation having its principal place of business in the State of its creation, as trustee, in a court of this State cannot be removed as to such trustee, to the United States circuit court upon petition of such corporation. *Weeks v. Billings*, 55 N. H. 371.

See *Smith v. R. R. Co.*, 33 N. H. 337.]

§ 14. In such case, like proceedings may be had by or against the corporation or partnership, upon summons or notice to or by such officer, agent, or member, to give such deposition, and upon their failure or refusal, as in the case of an individual.

## TITLE XXXIV. OF CRIMES AND OFFENSES.

Ch. 273. Of frauds and embezzlements.

275. Of larceny and receiving stolen goods.

## CHAPTER CCLXXIII.

### Frauds and Embezzlements.

Sec. 11. Unauthorized issue of stock of a corporation.

12. Fraudulent issue of stock of a corporation.

13. Fraudulent entries by officers of corporations as to issues of stock.

14. Other fraudulent records by officers of corporations.

15. Fraud by officers of corporations not otherwise punishable.

§ 11. If a corporation increases its capital stock beyond the maximum amount fixed by its charter or otherwise authorized by law, or declares a stock dividend, or divides the proceeds of the sale of its stock among its stockholders, or issues certificates of stock when the par value of the shares represented by the certificates has not been fully paid to its treasurer, all certificates

issued for such unauthorized stock shall be void, and any of its directors or other officers or agent who shall take part in any such unauthorized increase or disposition of its capital stock, or in the distribution of the proceeds thereof, or in the issue of certificates of stock when not authorized by law, shall be severally fined not exceeding five thousand dollars, or be imprisoned not exceeding five years, or both.

§ 12. If any officer, agent, or servant of a corporation, or any other person, shall knowingly, falsely, and fraudulently issue a certificate for any stock of the corporation, or shall fraudulently sign any such certificate in blank or otherwise with the intent that it shall be so issued by himself or any other person, he shall be fined not exceeding five thousand dollars, or be imprisoned not exceeding five years.

§ 13. If any officer, agent, or servant of a corporation whose duty it is to keep a record of the certificates of stock issued by the corporation, and of the stockholders in the corporation, shall fraudulently omit to make and keep a true record of any certificate issued or transfer made, or of the stockholders of the corporation, or shall fraudulently make a false record of any such certificate or transfer, or of such stockholders, with

intent to defraud, he shall be fined not exceeding five thousand dollars, or be imprisoned not exceeding five years, or both.

§ 14. If any officer, agent, or servant of a corporation shall fraudulently make any false entry or record in any book of the corporation with intent to defraud, for which he is not punishable under the preceding section, he shall be fined not exceeding five thousand dollars, or be imprisoned not exceeding five years, or both.

§ 15. If any officer, agent, or servant of a corporation shall willfully or fraudulently violate any provision of law for the government of corporations, their officers, agents, and servants, for which other punishment is not specially prescribed, he shall be imprisoned not exceeding five years, or be fined not exceeding five thousand dollars, for each offense.

## CHAPTER CCLXXV.

### Larceny and Receiving Stolen Goods.

Sec. 9. Stealing deeds, wills, etc.

§ 9. If any person shall steal, take, and carry away \* \* \* any record of any corporation, public or private, he shall be imprisoned not exceeding five years.

## LEGISLATIVE ACTS RELATING TO CORPORATIONS PASSED SUBSEQUENTLY TO 1891.

1. Amending chapter 147 of the general laws, relating to general powers of corporations.
2. Amending chapter 147 of the general laws, relating to voluntary corporations.
3. For the preservation of health of female employees.
4. To aid in the reorganization of corporations.

### Act 1.

AN ACT in amendment of chapter 147 of the general laws, relating to the general powers of corporations.

Be it enacted by the senate and house of representatives in general court convened:

Section 1. The supreme court shall have general powers in equity, upon petition of stockholders holding one-fourth of the stock of any corporation, or, if there are no stockholders, of one-fourth of the members thereof, to decree the dissolution of the corporation, or such other relief as may be just, and may make such final and interlocutory orders, judgments, and decrees for the winding up of their affairs, the payment of their debts, and the distribution of their assets, as justice may require.

§ 2. All acts and parts of acts inconsistent with this act are hereby repealed, and this act shall take effect upon its passage.

(Approved April 10, 1891.)

### Act 2.

AN ACT in amendment of chapter 147 of the Public Statutes, relating to voluntary corporations.

Be it enacted by the senate and house of representatives in general court convened:

Section 1. The provisions of chapter 147 of the Public Statutes are hereby amended, so far as necessary to authorize five or more persons of lawful age to form a corporation in accordance with the provisions of said chapter, for the following additional purposes: For social recreation or amusement; for mental improvement; to prevent cruelty to animals; for the promotion of law and order and the better enforcement of existing laws; for the protection or propagation of fish and game; and any other lawful purpose not prohibited by the provisions of said chapter.

§ 2. (As amended March 10, 1897.) Any corporation now or hereafter organized in accordance with the provisions of said chapter as hereby amended, and any existing corporations which might have been organized under the provisions of said chapter, may change its name, increase or decrease its capital stock, or amend its articles of association, by a majority vote of such cor-



Seats for female employes; reorganization — Acts, February 26 and March 21, 1895.

poration, at a meeting duly called for that purpose, by recording a certified copy of such vote in the office of the secretary of State and in the office of the clerk of the town or city in this State which is its principal place of business.

§ 3. All acts and parts of acts inconsistent herewith are hereby repealed.

§ 4. This act shall take effect upon its passage.

(Approved January 31, 1895.)

See Statutes. Ch. 147.

#### Act 3.

AN ACT for the preservation of the health of females employed in manufacturing, mechanical, and mercantile establishments.

Be it enacted by the senate and house of representatives in general court convened:

Section 1. Every person, firm, or corporation employing females in any manufacturing, mechanical, or mercantile establishment in this State, shall provide suitable seats for the use of the females so employed, and shall permit the use of such seats by them when they are not necessarily engaged in the active duties for which they are employed.

§ 2. Any person, firm, or corporation violating any of the provisions of this act, shall be punished by a fine of not less than ten dollars nor more than thirty dollars for each offense.

§ 3. All acts and parts of acts inconsistent with this act are hereby repealed, and this act shall take effect upon its passage.

(Approved February 26, 1895.)

#### Act 4.

AN ACT to aid in the reorganization of corporations.

Be it enacted by the senate and house of representatives in general court convened:

Section 1. The foreclosure of mortgage of any corporation organized under the laws of this State shall inure to the benefit of the holders of bonds, coupons, and other claims secured thereby, and whenever the

franchises of the corporation are included in the mortgage with power of sale, and foreclosure made by decree of court, and the property, rights, and franchises sold thereunder, the purchasers of the property, rights, and franchises of such corporation, their successors and assigns, are hereby constituted a corporation as of the date of foreclosure for all purposes, and they are hereby vested with all the rights, powers, and privileges of the original corporation under its charter or the public laws. The trustee under such mortgage, at auction sale, may convey to said purchaser or to said new corporation all the right, title, and interest under the mortgage and by virtue of the foreclosure thereof, and thereupon said trustee shall be discharged.

§ 2. The new corporation may call its first meeting in the same manner provided for calling the first meeting of the original corporation, or any purchaser at said auction sale may call the same by publication in some newspaper published in the city of Concord; may use the old corporate name, or adopt a new one, by which it shall thereafter be known; may issue capital stock, as the directors may determine, in amount not exceeding the purchase sum at the auction sale of foreclosure under the mortgage; shall file a certificate with the secretary of State, signed by the treasurer and a majority of directors of the new corporation, setting forth the sale under foreclosure proceedings, the amount of capital as fixed at the first meeting, and the corporate name adopted; and said new corporation shall have all the rights, powers, and franchises of the old, may hold said mortgaged property purchased at said sale, and be subject to all the liabilities of like corporations under the laws of the State.

§ 3. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed, and this act shall take effect on its passage.

(Approved March 21, 1895.)

[Where a corporation has no officer by whom a new meeting can be called, its powers are suspended or dormant until its reorganization, or by a meeting called under the statutes by a justice of the peace. *Goulding v. Clark*, 34 N. H. 148.]



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NEW JERSEY.

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# NEW JERSEY.

## I. CONSTITUTIONAL PROVISIONS RESPECTING CORPORATIONS.

### ARTICLE I.

#### Rights and Privileges.

§ 16. Private property shall not be taken for public use without just compensation.  
\* \* \*

§ 19. No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become security for or be directly or indirectly the owner of any stock or bonds of any association or corporation.

§ 20. No donation of land or appropriation of money shall be made by the State or any municipal corporation to or for the use of any society, association or corporation whatever.

### ARTICLE IV.

#### Legislature.

§ 7, paragraph 3. The legislature shall not pass any law \* \* \* impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made.

[A legislative charter is a contract between the State and the corporations, which the State cannot impair. *Zabriskie v. R. R. Co.*, 18 N. J. Eq. R. 178. The power to alter or modify a charter is confined to the powers and franchises granted by the charter. *Id.* A grant of an additional franchise to a corporation, not affecting or impairing those before granted, does not alter or modify the

charter, if it does not compel the corporation to exercise such franchise. *Id.*]

§ 7, paragraph 8. Individuals or private corporations shall not be authorized to take private property for public use, without just compensation first made to the owners.

§ 7, paragraph 11. The legislature shall not pass private, local or special laws in any of the following enumerated cases, that is to say: \* \* \* Granting to any corporation, association or individual any exclusive privilege, immunity or franchise whatever. Granting to any corporation, association or individual the right to lay down railroad tracks. \* \* \* The legislature shall pass general laws providing for the cases enumerated in this paragraph, and for all other cases which, in its judgment, may be provided for by general laws. The legislature shall pass no special act conferring corporate powers, but they shall pass general laws under which corporations may be organized and corporate powers of every nature obtained, subject, nevertheless, to repeal or alteration at the will of the legislature.

### ARTICLE X.

#### Schedule.

Section 1. The common law \* \* \* shall remain in force \* \* \* until \* \* \* altered or repealed, \* \* \* and all \* \* \* claims and rights of individuals and bodies corporate, and of the State, and all charters of incorporation shall continue.

## II. AN ACT CONCERNING CORPORATIONS.

(Revision of 1896. Approved April 21, 1896.)

[Note.—This act was approved by the governor April 21, 1896. No specific time having been named in the bill as to when it shall take effect, it therefore became the law on July 4, 1896.]

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4. Charter subject to alteration by legislature.  
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- 118a. Acts repealed.
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120. Extension of existence of stock-yard companies.
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**General powers of corporations.**

Section 1. Every corporation shall have power:

I. To have succession, by its corporate name, for the period limited in its charter or certificate of incorporation, and when no period is limited, perpetually;

Name may be changed. § 27, post. Name already in use, not to be assumed. § 8, post. Corporate existence may be extended. § 27, post.

[A corporation may acquire name by usage. *Alexander v. Berney*, 28 N. J. Eq. R. 90; *Den v. Helmes*, 3 N. J. L. R. 600. A contract is not void because the corporation with which it is made is misnamed therein. *Building Assn. v. Martin*, 13 N. J. L. R. 427; *Woolwich v. Forrest*, 2 id. 107; *Middletown v. McCormick*, 3 id. 92. And where complainant, being a corporation, sues by a wrong name, the bill may be amended at the hearing. *Id.* Misnomer of a corporation in a grant of application does not defeat the grant of application, nor prevent recovery upon it in the true name. *Township v. String*, 10 N. J. L. R. 323; *Cairns v. Hay*, 21 id. 174. So also with a bequest. *Van Wagenen v. Baldwin*, 7 N. J. Eq. R. 211; *McBride v. Exrs.*, 6 id. 107; *Goodell v. Children's Home*, 29 id. 32; *Lanning v. Sisters*, etc., 35 id. 392.

**a. Sue and be sued.**

II. To sue and be sued in any court of law or equity;

Process against corporations. § 87, post; against foreign corporations. § 88, post. Effect of service. § 89, post. Proceedings when summons not served. § 90, post. Service by publication and effect. §§ 90, 91, post. Remedies against officers and stockholders. §§ 92-94, post. Execution against corporations. §§ 61, 62, post. Voluntary dissolution, §§ 53-58, post. Action not to abate by dissolution. § 59, post. Insolvency proceedings. § 63, et seq., post. Actions by foreign corporations. § 98, post. Prerogative writs, service of, against foreign corporations. § 102, post. Collection of franchise tax, P. L., 1884 (Act of April 18). § 6, et seq., post.

## General powers — Act of 1896, § 1.

[A corporation may sue or be sued for libel. *Ins. Co. v. Perrine*, 23 N. J. L. R. 402; *McDermott v. Journal Assn.*, 43 id. 488; 44 id. 430. May sue for malicious prosecution. *Vance v. Ry. Co.*, 32 N. J. L. R. 334. And for assault and battery. *Brokaw v. Transp. Co.*, id. 328. And for tort committed by its servants or agents. *State v. R. R. Co.*, 23 N. J. L. R. 360; *Brokaw v. R. R. Co.*, 32 id. 328. An indictment will lie against a corporation for misfeasance. *Id.* An action of assumpsit may be maintained against a corporation upon an implied contract. *Trustees v. Mulford*, 3 Hal. 182; *Worrell v. Church*, 23 N. J. 18). § 6, et seq., post.

**Foreign corporations.**

A foreign corporation not doing business in the State cannot be sued in the courts thereof, on a contract made in another State. *Camden Rolling Mill v. Crude Iron Co.*, 32 N. J. L. R. 15. But such a corporation may defend in an action to enforce an illegal taxation. *Erie Ry. Co. v. State*, 31 N. J. L. R. 531. A foreign corporation is liable to be sued in this State, on a contract made in the State, when summoned in accordance with our laws. *National Condensed Milk Co. v. Brandenburg*, 40 N. J. L. R. (11 Vr.) 111. But it can be sued here if incorporated under the laws of this and another State. *State, Easton Delaware Bridge Co. v. Metz*, 32 N. J. L. R. 199; *McGregor v. Erie Ry. Co.*, 35 id. 115. If a foreign corporation is transacting business in the State by virtue of a legislative grant, it can sue or be sued. *Austin v. N. Y. & Erie R. Co.*, 25 N. J. L. R. 381.

A writ of attachment cannot issue against a foreign corporation. *Bank v. Lackawanna R. R. Co.*, 27 N. J. L. R. 206. See *State v. Del., Lack. & W. R. Co.*, 30 id. 473; 31 id. 531. The agents of a corporation may be sued although the corporation cannot. *Bonaparte v. Camden & Amboy R. R. Co.*, *Bald*, 205.

**Parties.**

A majority of the directors may bring suit in the name of the corporation. *Johnston v. Jones*, 23 N. J. Eq. R. (8 C. E. Greene) 216. An action to compel officers of a private corporation to account must be in name of corporation and not in the name of an individual stockholder. *Brown v. Van Dyke*, 8 N. J. Eq. R. (4 Hal.) 795.

But in special cases, where all the officers of the corporation are guilty of misconduct that amounts to a breach of trust, the action may be so brought. *Id.*

Where a receiver of a foreign corporation sues the officers in this State, the corporation is not a necessary party. *Bidlack v. Mason*, 26 N. J. Eq. R. (11 C. E. Greene) 230. The corporation is a necessary party where the action is brought in the name of the president, to enforce a contract signed by him as president and on behalf of the corporation. *Nichols v. Williams*, 22 N. J. Eq. R. (7 C. E. Greene) 63. Where the question is whether the acts of trustees in their corporate capacity are within their corporate powers, the corporation is a proper and necessary

party. *Morgan v. Rose*, 22 N. J. Eq. R. (7 C. E. Greene) 584.

An action for installments due on stock subscriptions of a railroad company is properly brought in the name of the corporation. *Del. & Atl. R. R. Co. v. Irick*, 23 N. J. L. R. (3 Zab.) 321.

Receivers may sue or defend in the name of the corporation. *Willink v. Morris Canal Co.*, 4 N. J. Eq. R. (3 C. E. Greene) 377. Where the receiver of an insolvent corporation refuses to bring suit, a creditor or a stockholder thereof may maintain a suit against the president and directors for gross official neglect and mismanagement. *Ackerman v. Halsey*, 37 N. J. Eq. R. (10 Stew.) 356.

Where the directors themselves are the wrongdoers a stockholder may maintain a suit in equity to enforce a right in favor of the corporation. *Knoop v. Bohmrich*, 49 N. J. Eq. R. (4 Dick.) 82; s. c., 23 Atl. Rep. 118; *Ellerman v. R. & U. S. Co.*, id. 217.

An individual cannot use the name of a corporation to protect or recover his own rights. *Silk Co. v. Campbell*, 27 N. J. L. R. (3 Dutch.) 539.

**Pleadings.**

In an action on a contract a corporation need not set out in the declaration how or by what authority they were incorporated nor call or aver themselves to be a corporation. *Bennington Iron Co. v. Rutherford*, 3 Harr. 105, 158. An answer which admits that a mortgage was executed to the complainant, a corporation, of "the purport and effect set forth in the bill," does not raise an issue as to the corporate existence of such complainant, or its capacity to take such mortgage. *Butterfield v. Third Av. Bank*, 25 N. J. Eq. R. (10 C. E. Greene) 533.

Where the whole equity of a bill rested on the fact that the defendants were trustees of a church, and as such were violating their trust; and there was no distinct allegation in the bill that the defendants were such trustees, or that there existed any such corporate body, or how the trust was being violated, held, fatal defects. *Rainier v. Howell*, 9 N. J. Eq. R. (1 Stock.) 121.

An objection that the corporate character of defendants does not sufficiently appear by the bill, cannot avail at the final hearing. *Worrell v. First Church*, 23 N. J. Eq. R. (8 C. E. Greene) 96.

In declaring on a promissory note it is not necessary to aver that the corporation had power to make such note. If it be ultra vires the plaintiff will fail at the trial. *Montague v. Church School Dist.*, 34 N. J. L. R. (5 Vr.) 218.

A corporation, bringing suit in a justice's court, is not, upon an appeal, bound to prove its corporate existence if no objection was made by the defendant to its failure to do so on the trial in the court below. *Rumsey v. N. Y. & N. J. Telephone Co.*, 49 N. J. L. R. (20 Vr.) 322; s. c., 8 Atl. Rep. 290.

A summons and declaration naming "John W. Parrott, president of the Long Branch Hotel and Cottage Co.," as the defendant, indicate John W. Parrott individually as the defendant, in the absence of evidence that the company is suable



## General powers; seal; real estate — Act of 1896, § 1.

in the name of its president. *Terhune v. Parrott*, 59 N. J. L. R. (30 Vr.) 16; s. c., 35 Atl. Rep. 4.

Where the action is brought by a receiver appointed by a court of another State, the declaration must show the grounds of his right to sue officially. *Hurd v. Elizabeth*, 40 N. J. L. R. (11 Vr.) 218.

## b. Seal.

III. To make and use a common seal, and alter the same at pleasure;

[The power to make and use a common seal is incident to every corporation. *Leggett v. M. & B. Co.*, 1 N. J. Eq. R. 541. The appearance of a corporate seal on an instrument is evidence that it was affixed by proper authority. *Id.*; *Mfg. Co. v. Stock-Yard Co.*, 23 N. J. Eq. R. 162. The impression of a seal held to be a seal. *Corrigan v. The Trenton, etc., Co.*, 5 N. J. Eq. R. 52. The sealing of an instrument with corporate seal raises presumption of due execution. *Parker v. Mfg. Co.*, 49 N. J. L. R. 465; s. c., 9 Atl. Rep. 682.

Corporate seal must be proved by testimony. *Osborne v. Tunis*, 25 N. J. L. R. (1 Dutch.) 633. The testimony of an officer that he had no knowledge of corporate authority having been given to affix a seal, will not overcome the presumption of due execution. *Parker v. Mfg. Co.*, 49 N. J. L. R. 465; s. c., 9 Atl. Rep. 682; *Van Hook v. Mfg. Co.*, 5 N. J. Eq. R. (1 Hals.) 137. To bind a corporation under a lease for years, execution under its corporate seal is not requisite. *Crawford v. Longstreet*, 43 N. J. L. R. (14 Vr.) 325.

The presumption that an instrument to which the seal of a corporation is attached was first authorized by the corporation is overcome by proof that the authority for the execution of such instrument was given at a special meeting of the directors at which all were not present, and there being no proof that the absent directors were notified. *Whitehead v. Hamilton Rubber Co.*, 52 N. J. Eq. R. (7 Dick.) 78; s. c., 27 Atl. Rep. 897. The corporate seal must be affixed by the authority of the board of directors. *Leggett v. M. & B. Co.*, 1 N. J. Eq. R. (Sax.) 541.

A subsequent board of directors may ratify an invalid mortgage given by a former board. *Hoyt v. Bridgewater Co.*, 6 N. J. Eq. R. (2 Hals.) 253.

The general rule is that a corporation need use its seal only in cases where it would be essential for an individual to use it. The old common-law idea that a corporation can only act under its corporate seal no longer prevails. *Crawford v. Longstreet*, 43 N. J. L. R. 325.

It is not necessary to use wax or wafer. An impression of the seal on the paper is sufficient. *P. L.* 1875, p. 56; *P. L.* 1880, p. 154. No presumption of authority arises from the use of a common paper seal not on its face appearing to be the corporate seal, although accompanied by the recitation "witness the corporate seal." *Raub v. Blairstown Creamery Assn.*, 56 N. J. L. R. 264; s. c., 28 Atl. Rep. 384.

## c. Real estate; may hold and convey.

IV. To hold, purchase and convey such real and personal estate as the purposes of the corporation shall require, and all other

real estate which shall have been bona fide conveyed or mortgaged to the said corporation by way of security, or in satisfaction of debts, or purchased at sales upon judgment or decree obtained for such debts; and to mortgage any such real or personal estate with its franchises; the power to hold real and personal estate shall include the power to take the same by devise or bequest;

Foreign corporations may hold. § 95, post. Purchase of property with stock. § 49, post. Corporations organized for sale of lands. § 6, post. Purchase of property out of State. § 7, post.

## Real estate.

Where a corporation is empowered to acquire real estate, without limitation in point of estate, it has right to acquire a title in fee-simple. *State v. Brown*, 27 N. J. L. R. 13; *State v. Haight*, 35 id. 178; 36 id. 471; *Barnett v. Johnson*, 15 N. J. Eq. R. 481. The State alone can object to the capacity of a corporation to take a gift on ground that its property equals the amount it may legally hold. *De Camp v. Dobbins*, 29 N. J. Eq. R. 36; *Dock & Imp. Co.*, 39 id. 410. Legislative grants to private corporations are to be strictly construed. *R. R. Co. v. Ry. Co.*, 23 N. J. Eq. R. 441; *Greenwich v. R. R. Co.*, 24 id. 217. To bind a corporation under a lease for years, execution under its corporate seal is not requisite. *Crawford v. Longstreet*, 43 N. J. L. R. 325. A corporation may hold as agent from year to year. *Id.* Right of turnpike company to hold land. *Id.* The power to convey implies the power to mortgage. *Leggett v. M. & B. Co.*, 1 N. J. Eq. R. 541. But a mortgage signed by president and cashier, with a corporate seal affixed by them, without the authority of and in accordance with resolution of the board of directors, is not a valid instrument. *Id.*

The power to hold lands is limited to the purposes for which the power was conferred. The English statutes of mortmain have never been in force in this State. *State v. Newark*, 25 N. J. L. R. (1 Dutch.) 315; *aff'd*, 26 id. (2 Dutch.) 519. See also *State v. Mansfield*, 23 id. (3 Zab.) 510; *Kean v. Johnson*, 9 N. J. Eq. R. (1 Stock.) 401.

Where land is paid for with the funds of the corporation, a party taking the title becomes a trustee for the benefit of the stockholders and creditors of the corporation. *Stratton v. Dialogue*, 16 N. J. Eq. R. (1 C. E. Greene) 70.

A religious corporation may mortgage lands conveyed to them for a special purpose. 13 N. J. Eq. R. (2 Beas.) 77.

## Personal estate.

A bank may hold bonds and mortgages as collateral security. *Trenton Bank v. Woodruff*, 16 N. J. Eq. R. (1 C. E. Greene) 117. A corporation may acquire bonds of other corporations unless expressly prohibited by its charter. *Bennington Iron Co. v. Rutherford*, 18 N. J. L. R. (3 Harr.) 467.

## d. Officers and agents.

V. To appoint such officers and agents as the business of the corporation shall require, and to allow them suitable compensation;

Officers designated. § 13, post. Vacancy, how filled. § 15, post. Statements by. § 43, post. Lists of officers to be filed, on voluntary dissolution. § 31, post. Officers paying company debts. § 93, post.

[Failure to elect officers at the proper time does not dissolve the corporation. *Building Assn. v. Martin*, 13 N. J. Eq. R. (2 Beas.) 427. The power to appoint officers and agents is ordinarily in the directors, but it may be delegated. It is not necessary that the appointment of an agent should be made under the corporate seal. *Mendham v. Losey*, 2 N. J. L. R. 327.

A trading or manufacturing corporation has the same authority as an individual trader or manufacturer to sell or consign its goods, to select its selling agents, and to impose conditions as to whom they shall sell and the terms upon which they shall sell. *Stockton v. American Tobacco Co.*, 53 N. J. Eq. R. 400; s. c., 32 Atl. Rep. 261.

Where persons are officers de facto, they are in colore officii and their acts are valid and binding on the corporation until they are ousted. *Doremus v. Church*, 3 N. J. Eq. R. 349; *Bank v. Burnett Mfg. Co.*, 32 id. 238; *Brahn v. Forge Co.*, 38 N. J. L. R. 74; *Bank v. Chetwood*, 8 id. 1.

#### e. By-laws.

VII. To make by-laws fixing and altering the number of its directors, and providing for the management of its property, the regulation and government of its affairs, and the transfer of its stock, with penalties for the breach thereof not exceeding twenty dollars;

By-laws, how and by whom made. § 11, post. To prescribe manner of election of officers. § 13, post. Regulations as to voting. § 36, post. Determine number of shares to be held by directors. § 39, post. To provide for filling vacancies. § 15, post. For transfer of stock. § 20, post. Provision for meetings of directors out of State. § 44, post. Fix day for payment of dividends. § 47, post.

[The power to make by-laws is incident to every corporation. *Leggett v. M. & B. Co.*, 1 N. J. Eq. R. 541. But such by-laws must be both reasonable and legal. And whether they are so is a question for the court. *State v. Mayor*, 37 N. J. L. R. 348; *Dayton v. Quigley*, 29 N. J. Eq. R. 79; *Mattison v. Young*, 24 id. 535. Reasonableness of the by-laws is a question of law, not of fact; by-laws of a corporation bind only the members, not strangers. *State v. Overton*, 24 N. J. L. R. 435. A by-law to be set aside should be demonstrably shown to be unreasonable and contrary to some great public principle. *Paxson v. Sweet*, 13 N. J. L. R. 196.

Whether a by-law which affects third persons, not members of such corporation, is reasonable or not is a question of fact for the jury. *Morris & Essex R. R. Co. v. Ayers*, 29 N. J. L. R. (5 Dutch.) 393.

The regulations of a corporation, as a "clearing house" cannot bind persons, not members. *Overman v. Hoboken Bank*, 30 N. J. L. R. (1 Vr.)

61; 11 id. (2 Vr.) 563. The regulations of a railroad corporation, with regard to the conduct of its passengers, are not by-laws, but regulations whose validity depends not upon their being lawful, but reasonable. *State v. Overton*, 24 N. J. L. R. (4 Zab.) 435. All persons applying to become members of an association are presumed to know its by-laws and the terms of its charter. *Belleville Ins. Co. v. Van Winkle*, 12 N. J. Eq. R. (1 Beas.) 344.

A corporation under a power to make by-laws for its government cannot enlarge its powers by adopting a by-law beyond the powers granted by its charter. *Stewart v. Odd Fellows' Mut. Ins. Assn.*, 12 N. J. L. J. 110.

The by-laws of a corporation as to the periodical examination of the accounts of its cashier are for its own security. They form no part of the contract with the sureties of the cashier. *Van Voorst v. Canal Co.*, 21 N. J. L. R. (1 Zab.) 100.

Whenever a by-law seeks to alter a well-settled rule of common law, or to establish a rule interfering with the rights or endangering the security of individuals or the public, a statute or other special authority emanating from the creating power must be shown to legalize it. *Taylor v. Griswold*, 14 N. J. L. R. (2 Greene) 222.

The by-laws may prescribe the manner of filling vacancies in office of director. *Kearney v. Andrews*, 10 N. J. Eq. R. (2 Stock.) 70.

#### Transfer of stock.

A by-law of a gas company providing that no certificate of stock shall be transferred while the transferee is indebted to the company for gas, is void as to a bona fide holder thereof, who took the certificate as collateral security for a debt without notice of such by-law. *Drexel v. Long Branch Gas Co.*, 3 N. J. L. J. 250.

If the charter of a corporation provides that all shares of its capital stock shall be transferable on the books of the company, in such manner as the by-laws shall ordain, no legal transfer can be made until it provides books and ordains by-laws for such transfer. *McCowry v. Doremus*, 10 N. J. L. R. (5 Hal.) 245.

Where a by-law is adopted as a part of the original organization of the company, and the subscriptions of stock are made and money paid thereon upon the strength of it, it becomes a fundamental contract between the stockholders, and cannot afterward be altered, even though a general power be reserved in the by-laws to make alterations therein. Rights under such a by-law are vested in the stockholders and pass to each new holder of stock by transfer. *Loewenthal v. Rubber Reclaiming Co.*, 52 N. J. Eq. R. 440; s. c., 28 Atl. Rep. 454.]

#### f. Dissolution.

VII. To wind up and dissolve itself, or be wound up and dissolved in manner hereafter mentioned.

For proceedings for voluntary dissolution. §§ 31, 32, post. Dissolution by legislature. § 4, post. Corporate existence to continue for certain pur-

## Additional powers; ultra vires — Act of 1896, § 2.

poses. § 53, post. Surrender of corporate franchises. § 32, post. Dissolution by decree in insolvency proceedings. § 69, post. Charter forfeited for failure to present books. § 44, post. By proclamation of governor for a failure to pay taxes. P. L. 1896, p. 319, post.

[Neither a mere agreement to transfer, nor the actual transfer of all the estate of a corporation, including the stock itself, will extinguish the charter. *Zinc Co. v. Franklinite Co.*, 13 N. J. Eq. R. (2 Beas.) 323. A failure to elect officers at the proper time will not effect a dissolution. *Hoboken Assn. v. Martin*, 13 N. J. Eq. R. (2 Beas.) 427. See § 41, post, which settles the law in accordance with this case.

When a turnpike corporation, whose charter had expired by its own limitation, sold their roads and bridges to an individual, all the franchises were held to be destroyed. *Matter of Public Highway*, 22 N. J. L. R. (2 Zab.) 293. See also *State v. Snedeker*, 30 id. (1 Vr.) 80.]

## Additional powers.

§ 2. In addition to the powers enumerated in the first section of this act and the powers specified in its charter or in the act or certificate under which it was incorporated, every corporation, its officers, directors and stockholders, shall possess and exercise all the powers and privileges contained in this act, so far as the same are necessary or convenient to the attainment of the objects set forth in such charter or certificate of incorporation; and shall be governed by the provisions and be subject to the restrictions and liabilities in this act contained, so far as the same are appropriate to and not inconsistent with such charter or the act under which such corporation was formed; and no corporation shall possess or exercise any other corporate powers, except such incidental powers as shall be necessary to the exercise of the powers so given.

Banking powers prohibited. § 3, post. Purposes.

[The general act gives to all corporations general corporate powers and all others necessary to their exercise. If these were not sufficient to effect the objects of the corporation, recourse was formerly had to the legislature for a specific grant of power. The Constitution providing that "the legislature shall pass no special act conferring corporate powers, but shall pass general laws under which corporations may be organized and corporate powers of every nature obtained," and the General Corporation Act being, as it now stands, passed in obedience of the mandate of the Constitution, the certificate required by that act becomes the charter of the company, and the equivalent of the former special act of the legislature. *Ellerman v. Chicago Junct. Ry.*, etc., Co., 49 N. J. Eq. R. 217; s. c., 23 Atl. Rep. 287.

The powers of a corporation are two-fold; those derived from an express grant and those that are incident to it. *Leggett v. M. & B. Co.*, 1 N. J. Eq. R. 541. Such powers are regulated and de-

fined by the act which gives it existence. Id. For every power exercised authority must be found in the legislative grant. *Watson v. Water Co.*, 36 N. J. L. R. 195. A corporation has no rights and can exercise no powers except such as are expressly given or necessarily implied. *Trust Co. v. Miller*, 33 N. J. Eq. R. 155. And a contract not within scope of corporate powers cannot be made valid by assent of all stockholders. Id. Public grants are to be strictly construed and whatever is not plainly granted must be understood to have been withheld. *Gas Light Co. v. Gas Co.*, 40 N. J. Eq. R. 427; s. c., 2 Atl. Rep. 922; *Stockton v. C. R. Co.*, 49 N. J. Eq. R. 52; *State v. Leister*, 28 id. 103. Equity will restrain excess of corporate powers, but plaintiff must not be guilty of laches. *Rabe v. Dunlap*, 51 N. J. Eq. R. 41; s. c., 25 Atl. Rep. 959. Directors have power to make any contract which may be necessary, or fit and proper to enable the corporation to accomplish the purposes of its creation. *Park v. Locomotive Works*, 40 N. J. Eq. R. 114; s. c., 3 Atl. Rep. 162. The State may interpose at any time and compel an abandonment of an act in excess of corporate powers, and if need be revoke the charter. *R. R. Co. v. R. R. Co.*, 48 N. J. L. R. 530; s. c., 7 Atl. Rep. 523. Courts will, as a general rule, presume that contracts made by a corporation, which appear to be designed to promote its legitimate operation, are within limits of its powers, and the burden of demonstrating their invalidity is upon their assailant. *Ellerman v. Chicago, etc., Co.*, 49 N. J. Eq. R. 218; s. c., 23 Atl. Rep. 287. A corporation created for the purpose of manufacturing has implied power to make negotiable paper for use within scope of its business, but no power to become a party to accommodation paper. *Bank v. Young*, 41 N. J. Eq. R. 531; s. c., 7 Atl. Rep. 488; *Fifth Ward Sav. Bk. v. First Nat. Bk.*, 48 N. J. L. R. (19 Vr.) 513; s. c., 7 Atl. Rep. 318. As to contract by estoppel; see *The Metropolitan etc., Co. v. Telephone Co.*, 44 N. J. Eq. R. 568.

## Ultra vires; implied powers.

A corporation organized under the general law is vested with the powers conferred by the general act, and those contemplated by the certificate, and such incidental powers as are necessary, in the sense of convenient, reasonable and proper. *Ellerman v. Chicago, etc., Co.*, 49 N. J. Eq. R. 218; s. c., 23 Atl. Rep. 287. The doctrine of ultra vires ought not to be unreasonably applied. Id. Contracts for the compromise of suits are within the exercise of incidental powers. Id.

The last clause of the above section is a prohibition of acts not within the scope of powers granted, and contracts in contravention of it are illegal. *Camden & Atl. R. R. Co. v. Mays Landing R. R. Co.*, 48 N. J. L. R. (18 Vr.) 376.

The courts of New Jersey have placed a liberal construction upon the words "necessary to the exercise." Power necessary to a corporation does not mean simply power which is indispensable; a power which is obviously appropriate and convenient to carry into effect the franchise granted has always been deemed a necessary one. In short, the term comprises a grant of the right to use



## Banking powers; charter may be amended — Act of 1896, §§ 3, 4.

all the means suitable and proper to accomplish the end which the legislature had in view at the time of the enactment of the charter. *State R. R. Co. v. Hancock*, 35 N. J. L. R. 537; *Olmstead v. Morris Aqueduct*, 47 id. 311; *Crawford v. Longstreet*, 43 id. 325; *Morris Canal Co. v. Love*, 37 id. 60.

In all cases where a corporation exceeds the limits of the power given to them, or abuse or misapply it, the court will interfere; but it will not give its aid where the powers granted have been exercised in good faith, or where they are discretionary, or the right doubtful. *Scudder v. Trenton Del. Falls Co.*, 1 N. J. Eq. R. (Sax.) 693. A court will interfere if it is shown that a corporation is employing their statutory powers, funds, etc., for the accomplishment of purposes not within the scope of their institution. *Gifford v. N. J. R. R. Co.*, 10 N. J. Eq. R. (2 Stock.) 171.

A majority of stockholders in a prosperous corporation cannot, at their own caprice, sell out the whole source of emoluments and invest the capital in other enterprises, where the minority desire the prosecution of the business in which they are engaged. *Kean v. Johnson*, 9 N. J. Eq. R. (1 Stock.) 401.

The directors of a railroad company, without any authority either by statute or charter, proposed to assume certain debts and buy the majority of the stock and bonds of a rival railroad; held, that the proposed purchase was ultra vires, and could not be executed even if ratified by the stockholders and that it was void and against public policy, in that its object was to prevent lawful competition. *Elkins v. Camden, etc., R. R. Co.*, 36 N. J. Eq. R. (9 Stew.) 5.

Illegal acts may be legalized by subsequent legislation. *State v. City of Newark*, 27 N. J. L. R. (3 Dutch.) 186; *State ex rel. Sharp v. Apgar*, 31 id. (2 Vr.) 359; *State ex rel. Walter v. Union*, 33 id. (4 Vr.) 351; *State ex rel. Trustees, etc., v. Readington*, 36 id. (7 Va.) 69. But this will not be allowed where the courts have set aside such illegal acts. *Scudder v. State ex rel. Baker*, 33 N. J. L. R. (4 Vr.) 424; *Belvidere v. Warren R. R. Co.*, 34 id. (5 Vr.) 194.

The State may interpose at any time and compel a corporation to abandon an act done in excess of its powers, and, if need be, may revoke its charter for usurpation. *Camden & A. R. R. Co. v. Mays Landing, etc., R. R. Co.*, 48 N. J. L. R. (19 Vr.) 530; s. c., 7 Atl. Rep. 523.

**Banking powers never implied.**

§ 3. No corporation created or to be created shall, by any implication or construction, be deemed to possess the power of discounting bills, notes or other evidences of debt, of receiving deposits of money, of buying gold or silver bullion, or foreign coins, of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt, upon loan or for circulation as money, unless such corporation is or shall be expressly incorporated for banking purposes, or unless such powers are or shall be expressly given in its charter.

Banking corporations not to be organized under this act. § 13, post. Franchise not to be sold to

banking corporation. § 82, post. Name of banking corporation not to be used. Supp. of April 27, 1897, post.

**Charter subject to alteration by legislature.**

§ 4. The charter of every corporation, or any supplement thereto or amendment thereof shall be subject to alteration, suspension and repeal, in the discretion of the legislature, and the legislature may at pleasure dissolve any corporation.

Charter may be annulled by chancellor. § 69, post. Void for failure to pay taxes. Act of 1896, post.

[Above section extends to every grant of franchise and privilege made after its enactment (1846) to corporations which were created before the act was passed. *State v. Commission, etc.*, 37 N. J. L. R. 228. This case was reversed by *New Jersey v. Yard*, 95 U. S. 104, which held that a statute of a State which declares that a charter of a corporation granted after its passage may be altered, amended or repealed, does not necessarily apply to a supplement to a charter already passed, though the supplement be subsequent to the statute; and that the question is, in every such case, whether the legislature making the contract intended that the former provision for repeal or amendment should become a part of the new contract by implication. See also *Huyler v. Cragin Cattle Co.*, 40 N. J. Eq. R. (13 Stew.) 396. It does not bind subsequent legislatures so that they may not grant irrevocable charters, but it is to be considered as embodied in every corporate charter passed since its enactment, unless a purpose to omit it be plainly perceived. *Little v. Bowers*, 46 N. J. L. R. 304. It is a reservation to the State, to be exercised by the State only. It is not incorporated into special charters granted after its enactment, so as to affect injuriously the vested rights of stockholders. *Mills v. R. R. Co.*, 41 N. J. Eq. R. 2. It reserves to the legislature the authority, in its discretion, for proper ends, to make any alteration or amendment to a charter granted subject to it, which will not defeat or substantially impair the object of the grant, or any rights vested under it. *Montclair v. Ry. Co.*, 45 N. J. Eq. R. 436. It is not intended to affect the rights of corporators as between each other. Nor does it authorize the State to authorize one part of the stockholders, for their own benefit, at their mere option, to change their contract with the others. *Zabriskie v. R. R. Co.*, 18 N. J. Eq. R. 178. It does not authorize the legislature to change the object of the incorporation or to substitute another for it. Id.]

Every charter granted since the passage of this section is subject to alteration, although it contains no express words so declaring. *State v. Person*, 34 N. J. L. R. (3 Vr.) 134, 566; *State v. Douglas*, 36 id. (5 Vr.) 83. And all contracts resulting from the act of incorporation and its acceptance by the stockholders are presumed to have been made subject to this reservation. *Story v. Jersey City Plank Road Co.*, 16 N. J. Eq. R. (1 C. E. Greene) 13.

## Formation of corporation — Act of 1896, §§ 5-7.

**Amendments to this act not to impair remedies against corporations.**

§ 5. This act may be amended or repealed, at the pleasure of the legislature, and every corporation created under this act shall be bound by such amendment; but such amendment or repeal shall not take away or impair any remedy against any such corporation or its officers for any liability which shall have been previously incurred; this act and all amendments thereof shall be a part of the charter of every corporation heretofore or hereafter formed hereunder, except so far as the same are inapplicable and inappropriate to the objects of such corporation.

Amendments to certificates of incorporation. § 27, post.

**II. Formation, Constitution, Alteration, Dissolution.****Business corporation may be formed; certificate to be filed.**

§ 6. Three or more persons may associate themselves into a corporation to carry on any kind of manufacturing, mining, chemical, trading or agricultural business; the transportation of goods, merchandise or passengers, upon land or water; inland navigation; ferries; the building of houses, vessels, wharves or docks, or other mechanical business; the reclamation and improvement of submerged lands; the improvement and sale of lands; the examination and guaranty of the title to lands; the making, purchasing and selling manufactured articles, and acquiring and disposing of rights to make and use the same; the renting of buildings and steam or other power therewith; the cutting and digging of peat, stone, marl, clay, or other like substance, and dealing in the same, manufactured or unmanufactured, or any wholesale or retail mercantile business, or any lawful business or purpose whatever, upon making and filing a certificate of incorporation in writing, in manner hereinafter mentioned: Provided, That nothing herein contained shall authorize the formation of any insurance, safe deposit or trust company, banking corporation, savings bank or other corporation intended to derive profit from the loan and use of money, or of any railroad company (but companies may be formed for the purpose of constructing, maintaining and operating railroads, wholly in other States and Territories or in foreign countries), or any turnpike company or other company which shall need to possess the right of taking and condemning lands.

Corporation not to use "insurance," "safe deposit," "trust company" or "bank" as part of its name. Act of 1897, P. L. p. 274, app. April 23, 1897.

[A general law authorizing a certain number of persons to form a corporation does not exclude

non-residents as corporators. *R. R. Co. v. R. R. Co.*, 31 N. J. Eq. R. 475. A safe deposit company may organize under the General Corporation Act. *State v. Kelsey*, 53 N. J. L. R. 590. This case was decided prior to the revision of 1896, and is not now applicable. But as to a telegraph company, query. *Tel. Co. v. Newark*, 49 N. J. L. R. 348.

The word "person" as used in this section does not include a corporation. *Coddington v. Executors of Havens*, 8 N. J. Eq. R. 590. A corporation cannot in its own name subscribe for stock, or be a corporator under the General Railroad Law; nor can it do so by simulated compliance with the provisions of the law, through its agents, as pretended corporators and subscribers for stock. *Central R. R. Co. of N. J. v. Penn. R. R. Co.*, 31 N. J. Eq. R. 475. But see § 51, post, authorizing corporations to purchase stocks, etc.

The statute authorizes "persons" to form a corporation; it is implied that they shall be of full age. *Matter of Globe Assn.*, 135 N. Y. 280; s. c., 32 N. E. Rep. 122. As in favor of creditors and third persons dealing in good faith with a corporation, the regularity of its organization, effected under color of charter, cannot be impeached, and the acts of its officers, who are officers de facto under color of an election, are binding upon the corporation. *Water Co. v. De Kay*, 36 N. J. Eq. R. 548.

**Proceedings by quo warranto to inquire into legality of incorporation.**

A court of equity cannot enjoin a corporation from performing acts within its corporate power because its organization may be irregular or its purpose be to establish a monopoly; quo warranto is the remedy by which to challenge the exercise of franchises. *Stockton v. Corn-Tobacco Co.*, 55 N. J. Eq. R. (10 Dick.) 357; 36 Atl. Rep. 971; *Meredith v. N. J. Zinc Co.*, 37 id. 539. When a corporation exists de facto, the court of chancery cannot, at the instance of private parties, restrain its operations upon the ground that its organization is not de jure. In such case the proper remedy is by quo warranto, or information in the nature thereof, instituted by the attorney-general. *National Docks R. R. Co. v. Central R. R. Co.*, 32 N. J. Eq. R. (5 Stew.) 755; *West Jersey R. R. Co. v. Cape May R. R. Co.*, 34 N. J. Eq. R. (7 Stew.) 164.

**Corporations may conduct business and hold property in other States.**

§ 7. Any corporation of this State may conduct business in other States or in foreign countries and have one or more offices out of this State, and may hold, purchase, mortgage and convey real and personal property out of this State; Provided, such powers are included within the objects set forth in its certificate of incorporation.

Meetings of directors out of State. § 44, post.

[Boards of directors may lawfully hold meetings outside of the State. *Coe v. Midland Ry. Co.*, 31

## Certificate of incorporation — Act of 1896, §§ 8, 9.

N. J. Eq. R. (4 Stew.) 105; *Parsons v. Lent*, 34 id. (7 Stew.) 67. A provision in the certificate of incorporation that the portion of the business to be carried on out of the State "is the selling of the manufactured products of the company" is a material part of the contract of incorporation, to the observance of which the company and its directors may be held. The removal of the plant and manufacturing business out of the State changes materially and fundamentally the objects of the company and will be restrained. *Stickle v. Liberty Cycle Co.*, 32 Atl. Rep. 708.

**Certificate of incorporation; contents of.**

§ 8. The certificate of incorporation shall be signed in person by all the subscribers to the capital stock named therein, and shall set forth:

I. The name of the corporation; no name shall be assumed already in use by another existing corporation of this State, or so nearly similar thereto as to lead to uncertainty or confusion;

II. The location (town or city, street and number, if number there be) of its principal office in the State;

III. The object or objects for which the corporation is formed;

IV. The amount of the total authorized capital stock of the corporation, which shall not be less than two thousand dollars, the number of shares into which the same is divided and the par value of each share; the amount of capital stock with which it will commence business, which shall not be less than one thousand dollars; and, if there be more than one class of stock created by the certificate of incorporation, a description of the different classes, with the terms on which the respective classes of stock are created;

V. The names and post-office address of the incorporators and the number of shares subscribed for by each; the aggregate of such subscriptions shall be the amount of capital stock with which the company will commence business, and shall be at least one thousand dollars;

VI. The period, if any, limited for the duration of the company;

VII. The certificate of incorporation may also contain any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, the directors and the stockholders, or any class or classes of stockholders; Provided, such provision be not inconsistent with this act.

(This section thus amended by P. L. 1898, ch. 172, p. 407.)

Corporate existence begins on filing certificate. § 10, post. Authentication and record of certificate. § 9, post. To state classes of stock. § 18, post. Location of principal office to be set forth. Act of 1898, P. L. 410, post. Certificate on re-

organization. Act of 1897, P. L. 229, § 7, post. Amendment. § 27, post, and Act of 1898, P. L. 407. Extension of corporate existence. Act of 1897, P. L. 11, post.

[The certificate of incorporation required by this act is the charter of the company, and the equivalent of a special legislative act before the amendments of the Constitution. *Ellerman v. Chicago*, etc., Co., 49 N. J. Eq. R. 218; s. c., 23 Atl. Rep. 287. It is, to a certain extent, a contract between stockholders and corporation. *Kean v. Johnson*, 9 N. J. Eq. R. 401. The term "capital stock" means the amount contributed or advanced by the stockholders, and does not refer to the property of the company. *State v. Fire Assn.*, 23 N. J. L. R. 195. A subscription in good faith must be real, actual and honest, as distinguished from fictitious, pretended and deceptive. *Gas Co. v. Dwight*, 29 N. J. Eq. R. 242. Duties required of an incorporated company are in the nature of conditions annexed to the grant of the franchise. *State v. Road Co.*, 44 N. J. L. R. 496.

The corporation acts treat persons named in the certificate as the stockholders who hold the shares of the company's capital; throughout the act persons who have become subscribers for stock are regarded as stockholders. *Storage Co. v. Assessors*, 56 N. J. L. R. (27 Vr.) 392; s. c., 29 Atl. Rep. 160.

The recording and filing of the certificate are not made by the statute a condition precedent to the legal existence of the corporation; they are merely necessary evidence of such existence. That evidence being produced, the legal existence of the corporation from the time of commencement fixed in the certificate is proved. *Vanneman v. Young*, 52 N. J. L. R. (23 Vr.) 403; s. c., 20 Atl. Rep. 53.

The certificate of incorporation of a trading company organized under the General Corporation Act, together with the by-laws adopted at the time and as a part of its organization, was held, under the circumstances of the case, to constitute a contract between the stockholders, which cannot be altered by legislative authority, without the consent of all the stockholders, or in the manner provided in the certificate and by-laws. *Loewenthal v. Rubber Reclaiming Co.*, 52 N. J. Eq. R. (7 Dick.) 440; s. c., 28 Atl. Rep. 454.

There must be at least three incorporators who must be natural persons. It is not necessary that any of them should be a resident of the State of New Jersey. *Central R. R. of N. J. v. Penn. R. Co.*, 31 N. J. Eq. R. 475.

**Certificate to be recorded and filed.**

§ 9. The certificate of incorporation shall be proved or acknowledged as required for deeds of real estate, and recorded in a book to be kept for that purpose in the office of the clerk of the county where the principal office of such corporation in this State shall be established, and, after being so recorded, shall be filed in the office of the secretary of State; said certificate, or a copy thereof duly certified by the secretary of State, shall be evidence in all courts and places.



## Corporate existence; by-laws; directors — Act of 1896, §§ 10-12.

[The acknowledgment may be taken by the chancellor, a commissioner of deeds, a justice of the Supreme Court, a master in chancery, a judge of any Court of Common Pleas. General Statutes, pp. 853, 854, 863, 864. Out of the State the certificate may be acknowledged by any officer having authority to take acknowledgments of deeds.

The omission of an immaterial part of the acknowledgment by an incorporator, as a failure to state that the contents of the certificate were made known to him and the omission of a certificate of notaryship to state that the notary was authorized by the laws of his State to take acknowledgments and proof of deeds do not render the incorporators liable as partners. *Stout v. Zulick*, 48 N. J. L. R. 599; 7 Atl. Rep. 362.

### Corporation exists from date of filing certificate.

§ 10. Upon making the certificate of incorporation and causing the same to be recorded and filed as aforesaid, the persons so associating, their successors and assigns, shall from the date of such filing, be and constitute a body corporate by the name set forth in said certificate, subject to dissolution as in this act elsewhere provided.

[The recording and filing of a certificate are not conditions precedent to legal existence of the corporation; they are merely the necessary evidence of such existence, and when produced prove the legal existence of a corporation "from the time of the commencement fixed in said certificate." *Vanneman v. Young*, 52 N. J. L. R. 403; s. c., 20 Atl. Rep. 53. The regularity of organization and legal existence of a corporation de facto cannot be questioned by private persons collaterally. 1d.

As in favor of creditors and third persons dealing with a corporation in good faith, the regularity and validity of its organization effected under color of its charter cannot be impeached. *Hackensack Water Co. v. De Kay*, 36 N. J. Eq. R. (9 Stew.) 548.

Where it is shown that there is a charter or a law under which a corporation with the powers assumed might lawfully be incorporated, and there is a colorable compliance with the requirements of the charter or law, and a user of the rights claimed under the charter or law, the existence of a corporation is established. The legality of the corporate existence of a corporation may be inquired into by the State, but not by any one else. *Stout v. Zulick*, 48 N. J. L. R. 599; s. c., 7 Atl. Rep. 362. See also *Rafferty, Receiver, v. Bank of Jersey City*, 33 N. J. L. R. 368; *Stockton v. American Tobacco Co.*, 36 Atl. Rep. 971.]

### Power to make by-laws; where vested.

§ 11. The power to make and alter by-laws shall be in the stockholders, but any corporation may, in the certificate of incorporation, confer that power upon the directors; by-laws made by the directors under power so conferred may be altered or repealed by the stockholders.

Power to make by-laws. § 1, ante.

### Corporation to be managed by board of directors chosen annually.

§ 12. The business of every corporation shall be managed by its directors, who shall respectively be shareholders therein; they shall be not less than three in number, and, except as hereinafter provided, they shall be chosen annually by the stockholders at the time and place provided in the by-laws, and shall hold office for one year and until others are chosen and qualified in their stead; but by so providing in its certificate of incorporation, any corporation organized under this act may classify its directors in respect to the time for which they shall severally hold office, the several classes to be elected for different terms; Provided, That no class shall be elected for a shorter period than one year or for a longer period than five years, and that the term of office of at least one class shall expire in each year; any corporation which shall have more than one kind of stock, may, by so providing in its certificate of incorporation, confer the right to choose the directors of any class upon the stockholders of any class or classes, to the exclusion of the others; one director of every corporation of this State shall be an actual resident of this State, and it shall not be necessary for more than one director to be a resident of this State, notwithstanding the provisions of any special charter or other act.

By-laws to fix number of directors. § 1, ante. Certificate may limit powers of directors. § 8, ante. Directors, officers chosen by. § 13, post. Vacancy in office of. § 15, post. Liabilities of. §§ 26, 29, 30, 45, post. Enforcement of liabilities, § 92, post. Directors must be stockholders. § 39, post. Election of directors. § 34, post. Voluntary dissolution by directors. § 31, post. Dissent of directors to dividends not earned. § 30, post. List of directors to be filed annually. § 43, post. Directors to exhibit lists of stockholders. § 33, post. Meetings of directors out of State. § 44, post. Directors to declare dividends. § 47, post. Directors trustees on dissolution. § 54, post. Directors may call meetings of stockholders when insolvent. § 63, post.

### Powers of directors.

[The executive power of the corporation is vested in the board of directors. The stockholders as such have no power to make any contract or execute any work; their power is confined to electing directors and advising them in their conduct of the business of the corporation. *Loewenthal v. Rubber Co.*, 52 N. J. Eq. R. 445; s. c., 28 Atl. Rep. 454.

It may sometimes become necessary in the transaction of some kind of business of a corporation to have the consent of all the stockholders, or of a certain portion of them, and resolutions giving such consent or advice have the effect of empowering the directors to act. But the board of directors is the legal executive, recognized as such not only in practice and on principle, but by the

## Directors — Act of 1896, § 12.

statute. *Placquemines Tropical Fruit Co. v. Buck*, 52 N. J. Eq. R. 219, 238; s. c., 27 Atl. Rep. 1004.

If stockholders in a corporation disapprove of the company's management, conducted without fraud or gross abuse or trust, or consider their speculation a bad one, their remedy is to elect new officers or sell their shares and withdraw. *Benedict v. Columbus Cont. Co.*, 49 N. J. Eq. R. 23; s. c., 23 Atl. Rep. 485; *Ellerman v. Chicago Junction R. R. Co.*, 49 N. J. Eq. R. 217; s. c., 23 Atl. Rep. 287. See also *Edison v. Edison United Phon. Co.*, 52 N. J. Eq. R. 620; s. c., 29 Atl. Rep. 195.

A director cannot make for himself, or for his own benefit, a contract that will bind the company. A contract may be repudiated by the company, at the instance of a stockholder. *Guild v. Parker*, 43 N. J. L. R. 435; *Gardner v. Butler*, 30 N. J. Eq. R. 702. If directors are employed in the business of a company, they can recover for their services upon the quantum meruit, but cannot vote themselves a stipulated sum. *Gardner v. Butler*, 30 N. J. Eq. R. 703. A director in both of two contracting companies cannot take part in settling the terms of a contract. *Met. Tel. Co. v. Telegraph Co.*, 44 N. J. Eq. R. 568. An expressed contract between the director of a corporation and his company is not void, but voidable. *Stewart v. R. R. Co.*, 38 N. J. L. R. 505. Where charter provides that annual meetings for election of directors shall be held by one stockholders, directors cannot by a by-law change time of holding annual election, that they may continue themselves in office more than one year, against wishes of holders of majority of stock. *Elkins v. R. R. Co.*, 36 N. J. Eq. R. 467. Stockholders have a standing in court to test regularity of election of directors. *Matter of St. Lawrence Steamboat Co.*, 44 N. J. L. R. 529. Individual stockholders cannot question, in judicial proceedings, the corporate acts of directors, if same are within powers of the corporation and in furtherance of its purpose, are not unlawful or against good morals, and are done in good faith and in exercise of honest judgment. *Ellerman v. Chicago, etc., Co.*, 49 N. J. Eq. R. 217; s. c., 23 Atl. Rep. 287. So long as directors keep within scope of their powers and act in good faith, their acts are not subject to judicial control or revision. *Edison v. Phonograph Co.*, 52 N. J. Eq. R. 620; s. c., 29 Atl. Rep. 195.

### Directors as trustees for stockholders and creditors.

Directors of a corporation are trustees for its stockholders. They are bound to use their authority for the maintenance of the rights and the protection of the interests of the stockholders. *Elkins v. R. R. Co.*, 36 N. J. Eq. R. (9 Stew.) 467; *Stewart v. Lehigh R. R. Co.*, 38 N. J. L. R. (9 Vr.) 505. Directors are trustees for creditors only in a limited sense. *Landis v. Sea Isle Hotel Co.*, 31 Atl. Rep. 755; 33 Id. 904. But see *Montgomery v. Phillips*, 53 N. J. Eq. R. (8 Dick.) 203, 217; s. c., 31 Atl. Rep. 622, where the court says: "The weight of authority is in support of the wholesome rule that the directors of an insolvent corporation are trustees of its funds for its cred-

itors." See also *Witherbee v. Baker*, 35 N. J. Eq. R. (8 Stew.) 501.

### Directors to act as board.

The board of directors must act as a board. A single director has no power merely by virtue of his office. For any power he undertakes to exercise he must get authority from the board. *Titus v. Cairo & Fulton R. R. Co.*, 37 N. J. L. R. 98.

In the absence of a rule requiring the concurrence of a definite number, a majority of a quorum, duly convened, may act; but each is entitled to notice. Notice of stated meetings may be given by the adoption of a rule fixing the time; constructive notice will be sufficient, if some rule legally prescribed declares it sufficient; but for special meetings, in the absence of a rule for constructive notice, actual notice must be given. *Cadmus v. Farr*, 47 N. J. L. R. (18 Va.) 208; *Wells v. Rubber Co.*, 19 N. J. Eq. R. 402; *Barnert v. Paterson*, 48 N. J. L. R. 400; s. c., 6 Atl. Rep. 15; *Met. Tel. Co. v. Dom. Tel. Co.*, 44 N. J. Eq. R. 573.

### De facto officers.

A failure to elect officers at the proper time will not work a dissolution. *Hoboken Assn. v. Martin*, 13 N. J. Eq. R. (2 Beas.) 427. When persons are officers de facto, they are in colore officii, and their acts will be valid until they are lawfully ousted, and until then their acts are binding on the corporation. *Doremus v. Dutch Ref. Ch.*, 3 N. J. Eq. R. (2 Greene Ch.) 332; *Savage v. Ball*, 17 Id. (2 C. E. Greene) 142; *State v. Myers*, (29 N. J. L. R. (5 Dutch.) 392; *State ex rel. Mitchell v. Tolan*, 33 Id. (4 Vr.) 195; *State v. Perkins*, 24 Id. (4 Zab.) 400; *Bank of Newark v. Mfg. Co.*, 32 N. J. Eq. R. (5 Stew.) 236.

### Contract of directors with corporation.

The directors of an incorporated company cannot speculate with the corporate funds and appropriate to themselves the profits of such speculation. They cannot, in making sales or purchases for the company, take advantage of their position as directors, and, either directly or indirectly, speculate upon the company. *Redmond v. Dickerson*, 9 N. J. Eq. R. (1 Stock.) 507. But a director may contract with the corporation, like any other individual; and when the contract is made the director stands, as to the contract, in the relation of a stranger to the corporation. *Stratton v. Allen*, 16 N. J. Eq. R. (1 C. E. Greene) 229. This principle does not seem to have been followed in the case of *Stewart v. Lehigh Valley R. R. Co.*, 38 N. J. L. R. 505, where the court says: "The vice which inheres in the judgment of a judge in his own cause contaminates the contract; the mind of the director or trustee is the forum in which he and his cestui que trust are urging their rival claims, and when his opposing litigant appeals from the judgment there pronounced, that judgment must fail. It matters not that the contract seems a fair one." See also *Guild v. Parker*, 43 N. J. L. R. 430; *Gardner v. Butler*, 30 N. J. Eq. R. 702; *Stroud v. Consumers' Water Co.*, 56 N. J. L. R. 422; s. c., 28 Atl. Rep. 578.

## Corporate officers — Act of 1896, §§ 13-15.

When the power of directors is unrestrained, either by law or contract, they may make any disposition of the profits of its business which they deem judicious. The question of the expediency of making any particular contract, which is within the power of the corporation, is committed to the judgment of its managers, and so long as they act in good faith, with honest motives and for honest ends, their acts are valid and conclude the corporation. *Park v. Grant Locomotive Works*, 40 N. J. Eq. R. (13 Stew.) 114; s. c., 3 Atl. Rep. 102.

Where the question is one of mere discretion in the management of corporate business by directors, or of doubtful event in the undertaking in which the corporation has embarked, remedy cannot be had by application to a court of equity. *Benedict v. Columbus Construction Co.*, 49 N. J. Eq. R. (4 Dick.) 23; s. c., 23 Atl. Rep. 485.

Where the directors of a corporation are themselves the wrongdoers, or the partisans of the wrongdoers, they are incapacitated from acting as the representatives of the corporation in any litigation which may be instituted for the correction of the wrong which it is alleged they have committed or approved. *Knoop v. Bohmrich*, 49 N. J. Eq. R. (4 Dick.) 82; s. c., 23 Atl. Rep. 118; 50 N. J. Eq. R. (5 Dick.) 485.

**Corporate officers; how chosen.**

§ 13. Every corporation organized under this act shall have a president, secretary and treasurer, who shall be chosen either by the directors or stockholders, as the by-laws may direct, and shall hold their offices until others are chosen and qualified in their stead; the president shall be chosen from among the directors; the secretary shall be sworn to the faithful discharge of his duty, and shall record all the votes of the corporation and directors in a book to be kept for that purpose, and perform such other duties as shall be assigned to him; the treasurer shall give bond in such sum, and with such surety or sureties, as shall be required by the by-laws, for the faithful discharge of his duty.

Power to appoint officers. § 1, ante. Vacancy in office. § 15, post. List of officers to be filed. § 43, post. Failure to appoint officers not to dissolve corporation. § 41, post. Liabilities of officers. §§ 26, 33, 48, 52, 61, post. Enforcement of liability. § 92, post. Officers paying company's debt. § 93, post.

**Powers of officers, generally.**

[The powers of a president of a corporation over its business and property are strictly the powers of an agent, delegated to him by the directors. *Stokes v. Pottery Co.*, 46 N. J. L. R. 237. He is the chief executive officer, and in virtue of his office has authority to perform all acts of an ordinary nature which, by usage or necessity, are incident to his office, and may bind the corporation by contracts in the usual course of business. *Id.* But he has no power to confess judgment against the corporation. *Id.* Nor to execute a cognovit. *Raub v. Creamery Assn.*, 56 N. J. L. R. 262; s. c.,

28 Atl. Rep. 384. Presumption of a president's authority arises from his attaching a common paper seal, and stating "witness the corporate seal of said defendant." *Id.*

The rule that notice of facts to an agent is constructive notice thereof to the principal himself has no application to a sale to a corporation, by its president, of property purchased by him in his private capacity; in such a transaction, the officer in making the sale and conveyance stands as a stranger to the company. *Barnes v. Trenton Gas Light Co.*, 27 N. J. Eq. R. (12 C. E. Greene) 33. When an officer of a corporation is dealing with them in his own interest, opposed to theirs, he cannot charge them with the knowledge he may possess, but which he has not communicated to them, and which they do not otherwise possess, of facts derogatory to the title he conveys. *Id.*

Where an officer of a corporation has been permitted to assume duties not within the ordinary scope of his official capacity and has been held out to the public as a general agent, his authority to act for the company in a particular transaction may be implied from the manner in which he has been permitted by the managers to transact its business. *Sav. Bank v. Nat. Bank*, 48 N. J. L. R. (19 Vr.) 513; s. c., 7 Atl. Rep. 318. Where an officer is clothed with apparent authority, although not inherent in his office, the general doctrine of agency applies, and the corporation may be liable for his acts. *Id.*

As to acts of an extraordinary nature, an officer must have express authority from the board of directors. He cannot confess judgment against the company. *Stokes v. N. J. Pottery Co.*, 46 N. J. L. R. 237.

The president and cashier of a bank as such have no inherent power to execute, in the name and behalf of the corporation, a mortgage or conveyance of real estate. *Leggett v. N. J. Mfg. & Bkg. Co.*, 1 N. J. Eq. R. 541.

De facto officer is one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law. *Mech. Nat. Bank v. Burnett Mfg. Co.*, 32 N. J. Eq. R. 236. The acts of a de facto officer of a corporation are valid, so far, at least, as they create rights in favor of third persons. *Hackensack Water Co. v. De Kay*, 36 N. J. Eq. R. 548.

**Additional officers and agents.**

§ 14. The corporation may have such other officers, agents and factors, who shall be chosen in such manner and hold their office for such terms as may be prescribed by the by-laws.

**Vacancies among officers; how filled.**

§ 15. Any vacancy occurring among the directors or in the office of president, secretary or treasurer by death, resignation, removal or otherwise, shall be filled in the manner provided for in the by-laws; in the absence of such provision such vacancies shall be filled by the board of directors.

[The power of filling vacancies at common law was incident to a corporation, and it had the



right by its by-laws to prescribe the manner in which such vacancies should be filled. *Kearney v. Andrews*, 10 N. J. Eq. R. (5 Hals.) 70.]

#### Corporate meetings; how called.

§ 16. The first meeting of every corporation shall be called by notice, signed by a majority of the incorporators, designating the time, place and purpose of the meeting, which notice shall be published at least two weeks before the meeting in some newspaper of the county where the corporation is established; or said first meeting may be called without publication if two days' notice be personally served on all the incorporators; or if all the incorporators shall in writing waive notice and fix a time and place of meeting, no notice or publication shall be required.

Meetings, how called generally. § 17, post. Stockholders may vote at meetings. § 17, post. Meetings held at principal office. § 44, post. Meetings, when corporation is insolvent. § 63, post. Meetings, when called by three stockholders. § 43, post.

[If all the incorporators but one are present at the first meeting, and he afterward assents to what was done, the incorporation is valid, although no notice was given. *Babbitt v. Iron Co.*, Stew. Dig. 208, § 13.]

#### Voting by proxy; certificate or by-laws to regulate meetings.

§ 17. Absent stockholders may vote at all meetings by proxy in writing; and every corporation may determine by its certificate of incorporation or by-laws the manner of calling and conducting all meetings, what number of shares shall entitle the stockholders to one or more votes, what number of stockholders shall attend, either in person or by proxy, or what number of shares or amount of interest shall be represented at any meeting in order to constitute a quorum; Provided, in no case shall more than a majority of shares or amount of interest be required to be represented at any meeting in order to constitute a quorum; if the quorum shall not be so determined by the corporation, a majority in interest of the stockholders, represented either in person or by proxy, shall constitute a quorum.

Bonds only evidence of right to vote. § 33, post. Election of directors. § 34, post. Proxy good for three years. § 36, post. Meetings to be held in State. § 44, post. Trustee, executor, etc., may vote. § 37, post. Stock held by company cannot be voted on. § 38, post.

[A stockholder who desires to vote by proxy is bound to furnish his agent with such written evidence as will reasonably assure the inspectors of agent's authority. But the power of attorney need not be in any prescribed form, nor be ex-

ecuted with any particular formalities. In re *Steamboat Co.*, 44 N. J. L. R. (15 Vr.) 530. The statutes vest in the stockholders the right to elect directors. It secures to each stockholder the right to one vote, at every election of directors, for each share of capital stock held by him, and makes the corporate books plenary and conclusive evidence of the ownership of stock and of the right to vote it. The right to hold election for directors, and vote at such election, is a right that is inherent in the ownership of stock, regardless of any motive that such owner may have. *R. R. Co. v. Elkins*, 37 N. J. Eq. R. 276.

Provision may be made in the original certificate of incorporation or by-laws, requiring each shareholder to hold a certain number of shares to entitle him to one or more votes. *Loewenthal v. Rubber Co.*, 52 N. J. Eq. R. (7 Dick.) 440; s. c., 28 Atl. Rep. 454.

Vote at special meetings must be by shares where the by-laws provided that act of 1896 should apply to all votes. *Weinberg v. Union Co.*, 37 Atl. Rep. 1026.]

#### Power to issue stock; common and preferred.

§ 18. Every corporation shall have power to create two or more kinds of stock of such classes, with such designations, preferences and voting powers, or restriction or qualification thereof, as shall be stated and expressed in the certificate of incorporation; and the power to increase or decrease the stock, as in this act elsewhere provided, shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stocks exceed two-thirds of the actual capital paid in cash or property; and such preferred stocks may, if desired, be made subject to redemption at not less than par, at a fixed time and price, to be expressed in the certificate thereof; and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed yearly dividend, to be expressed in the certificate, not exceeding eight per centum, payable quarterly, half-yearly or yearly, before any dividend shall be set apart or paid on the common stock, and such dividends may be made cumulative; and in no event shall a holder of preferred stock be personally liable for the debts of the corporation; but in case of insolvency its debts or other liabilities shall be paid in preference to the preferred stock; unless its original certificate of incorporation shall otherwise provide, no corporation shall create preferred stock, except by authority given to the board of directors by a vote of at least two-thirds of the stock voted at a meeting of the common stockholders, duly called for that purpose; the terms "general stock" and "common stock" are synonymous.

Amount of capital stock to be stated in certificate of incorporation. § 8, ante. Increase or

## Stock certificates; how transferable — Act of 1896, §§ 19, 20.

decrease of amount of stock. §§ 27, 28, 29, post. Stock partly paid, liability of owners. §§ 21, 22, post. Stock certificates. §§ 19, 25. Issued for property purchased. §§ 49, 50, post. Issue of new, when lost. §§ 111, 112, post. Mutual associations may issue stock. § 116, post. Transfer of stock. § 20, post. Stock of one corporation may be held by another. § 51, post. Dividends to be made only from profits or surplus. § 30, post. Time of making. § 47, post. Rights of preferred stockholders on winding up. § 80, post.

[Dividends on preferred stock can be paid only out of profits, even when stock is issued under a guarantee that a dividend of a certain sum shall be paid annually. *McGregor v. Ins. Co.*, 33 N. J. Eq. R. 181. Personal liability of stockholders for a debt contracted by the corporation is inconsistent with the idea of a body corporate at common law, and can arise only out of some statutory provision. *Bank v. Hendrickson*, 40 N. J. L. R. 52.]

Shares in the capital stock of corporations are neither money nor securities, but simply the title of the corporator to his proportion of the corporate property and income. *Graydon v. Graydon*, 23 N. J. Eq. R. (8 C. E. Greene) 229.

The term "capital stock," in an act of incorporation, means the amount contributed or advanced by the stockholders or members of the company, and does not refer to the property of the company. *State v. Morristown Fire Assn.*, 23 N. J. L. R. (3 Zab.) 195.]

**Certificate of stock.**

§ 19. Every stockholder shall have a certificate, signed by the president and treasurer, certifying the number of shares owned by him in such corporation.

New certificates, when lost. §§ 111, 112, 113, post. Certificates issued for property purchased. §§ 49, 50, post.

[A subscriber to stock whose subscription is received by the directors, and a regular certificate thereof issued to him, is a bona fide stockholder entitled to transfer his stock and to vote at elections, even though he has paid nothing for his stock. *Downing v. Potts*, 23 N. J. L. R. 66. The certificate of stock, issued in due form under the seal of the company, signed by the president and secretary, constitute the legal and proper evidence of ownership of such stock. *Id.*, 79.]

A subscriber for stock who has complied with the terms of his subscription, and has paid the assessments, becomes a stockholder and is entitled as of right to a certificate in the form prescribed by the statute. If the corporation refuses he may compel it to give him a certificate. *Storage Co. v. Assessors*, 56 N. J. L. R. 389, 393; s. c., 29 Atl. Rep. 160.

A certificate is not necessary to consummate the ownership by a subscriber of his shares subscribed for. The certificate is merely an additional and convenient evidence of the ownership of stock, which the holder may require for his own satisfaction or to enable him to make a transfer of

his interest. *Iron Co. v. Board of Assessors*, 29 Atl. Rep. 160.]

**Stock is personal property; how transferable.**

§ 20. The shares of stock in every corporation shall be personal property, and shall be transferable on the books of the corporation in such manner and under such regulations as the by-laws provide; and whenever any transfer of shares shall be made for collateral security, and not absolutely, it shall be so expressed in the entry of the transfer.

Transfer of stock within twenty days before election forfeits vote. § 36, post. By-laws regulating transfer. § 1, ante.

[A voluntary transfer of stock, by its owner, perfected by delivery and acceptance, becomes an executed contract and is irrevocable by the owner. *Walker v. Crucible Co.*, 47 N. J. Eq. R. 342; s. c., 20 Atl. Rep. 885. A certificate of stock accompanying equity, his title cannot be impeached, panied by an Irrevocable power of attorney, either filled up or in blank, is, in hands of a third person, presumptive evidence of ownership in the holder. *Prall v. Tilt*, 28 N. J. Eq. R. 480. And where party in whose hands the certificate is found is holder for value, without notice of any Id. Equity will compel transfer of shares to their equitable owner and restrain those fraudulently refusing to transfer stock from voting such stock to the prejudice of the real owners. *Archer v. Water-Works Co.*, 50 N. J. Eq. R. 33; s. c., 24 Atl. Rep. 508. Where charter provides that shares of stock shall "be transferable upon the books of the said corporation," they can be effectually transferred as collateral security by a delivery of the certificate, together with a blank irrevocable power of attorney. *Bank v. McElrath*, 13 N. J. Eq. R. 24. A shareholder whose subscription has been received by the directors, and has received a regular certificate therefor, is entitled to vote and to transfer his stock, even though he has paid nothing for it. *Downing v. Potts*, 23 N. J. L. R. 66.]

Equity will compel the transfer of shares to the equitable owner thereof and will restrain those fraudulently refusing to transfer such stock from voting the stock to the prejudice of the real owners. *Archer v. Water-Works Co.*, 50 N. J. Eq. R. (5 Dick.) 33; s. c., 24 Atl. Rep. 508.

The provisions of charters and by-laws, under the statute, that stock of the corporation shall be transferable only on the books of the company, are intended for the protection of the company. *Matthews v. Hoagland*, 48 N. J. Eq. R. (3 Dick.) 455, 486; s. c., 21 Atl. Rep. 1054.

Under the statute no legal transfer can be made until the corporation provides books and ordains by-laws for the transfer of its stock; and no legal demand can be made for a transfer of shares until then. *McCowrey v. Doremus*, 10 N. J. L. R. (5 Hal.) 245.

Shares can be effectually transferred as collateral security for a debt, as against a creditor

of the ballor, who attaches them without notice of any transfer, by a delivery of the certificates, together with a blank irrevocable power of attorney for the transfer from the ballor to the bailee. *Broadway Bank v. McElrath*, 13 N. J. Eq. R. (2 Beas.) 24; *Hunterdon Co. Bank v. Nassau Bank*, 17 id. (2 C. E. Greene) 496; *Rogers v. New Jersey Ins. Co.*, 8 id. (4 Hal.) 167; *Turnpike Co. v. Ferree*, 17 id. (2 C. E. Greene) 117.

The purchaser of a certificate of shares of stock, with an irrevocable power of attorney from the owner, without notice of any intervening equity, may fill up the power to himself and recover at law against the company for refusing to transfer the stock upon his demand. *Del., etc., R. R. Co. v. Irick*, 23 N. J. L. R. (3 Zab.) 321.

A mandamus, commanding a corporation to transfer shares of stock to a person who purchased at an attachment sale, will not be awarded, if the stock has been regularly transferred and new certificates issued to a person presenting a prima facie title before the attachment issued, although it be shown that there is doubt whether the transfer was not made to defraud creditors. *State Bank v. Foundry Co.*, 29 N. J. L. R. (3 Vr.) 439.]

#### Stockholder bound to pay full amount of his shares.

§ 21. Where the whole capital of a corporation shall not have been paid in and the capital paid shall be insufficient to satisfy its debts and obligations, each stockholder shall be bound to pay on each share held by him the sum necessary to complete the amount of such share, as fixed by the charter of the corporation, or such proportion of that sum as shall be required to satisfy such debts and obligations.

Assessments or unpaid stock. § 22, post. Enforcement of stockholders' liability. § 92, post.

[Subscriptions to capital stock are a trust fund for payment of corporate debts. *Wetherbee v. Baker*, 35 N. J. Eq. R. 501.

Individual liability of stockholders did not exist at common law. *Hood v. McNaughton*, 54 N. J. L. R. (25 Vr.) 425; s. c., 24 Atl. Rep. 497.]

#### Actions to recover.

A creditor having exhausted his remedy by judgment and execution, and a return nulla bona, may file a bill against the stockholders to compel the payment of unpaid subscriptions to capital stock. Such suit can only be prosecuted by a creditor suing in behalf of all the creditors. The corporation is a necessary part to the suit. All the property and assets of the corporation must be brought into court and put in the course of administration. *Id.*; *Bickley v. Schlay*, 46 N. J. Eq. R. (1 Dick.) 533.

The stockholders are liable for the payment in full of their subscriptions, if such payment be necessary to discharge the debts of the company. *Hood v. McNaughton*, 54 N. J. L. R. (25 Vr.) 425; s. c., 24 Atl. Rep. 497.

The Court of Chancery may direct a receiver to make calls and proceed at law to collect the unpaid subscriptions. *Barkalow v. Totten*, 53 N. J. Eq. R. (8 Dick.) 573; s. c., 32 Atl. Rep. 2. Where the chancellor decrees the payment of the entire amount of unpaid subscriptions, the validity of the decree cannot be questioned in a law court, as by showing that the entire amount is not necessary to satisfy claims of creditors. If there is a surplus he will distribute it to the stockholders equitably. *Hood v. McNaughton*, *supra*.

A distinction is drawn between one who holds his stock by transfer and an original subscriber. The former may, in the absence of fraudulent purpose, discharge himself from liability for unpaid installments by due transfer of his shares, while the latter cannot obtain immunity in that way. The subscription to the stock and the acceptance of the certificates constitute a contract between the subscriber and the company, by which the subscriber engages to pay the remaining installments on demand by the corporation. From this agreement the subscriber cannot recede without the consent of the company. *Id.*

Holders of stock given as bonus are liable on it to creditors, but not to the company. *Heberd v. Southwestern Cattle Co.*, 36 Atl. Rep. 122.]

#### Assessments on stock; how made.

§ 22. The directors of every corporation may, from time to time, make assessments upon the shares of stock subscribed for, not exceeding, in the whole, the par value thereof; and the sums so assessed shall be paid to the treasurer at such times and by such installments as the directors shall direct, said directors having given thirty days' notice of the assessment and of the time and place of payment either personally or by mail or by publication in a newspaper published in the county where the corporation is established.

Penalty for non-payment. § 23, post. Proceedings for sale of shares. § 24, post.

[A subscription to stock whereby subscriber declares that he takes the number of shares set opposite his name, and agrees to pay all assessments to be made by board of directors, it being shown that the only assessment the board of directors were authorized to make were calls of the capital stock, imports a promise, not to pay at once for the whole sum subscribed, but to pay such assessments. *Hotel Co. v. L'Anson's Exrs.*, 42 N. J. L. R. 10; *aff'd*, 43 id. 442. So, if there is a naked subscription for a certain number of shares, at so much per share, the implied promise is to pay such assessments as are made by the directors. The rule in this State may be stated as follows: A subscriber is not bound to pay for his stock except in the manner prescribed by statute or defined in the charter or by-laws, unless he waives those requirements. *Id.* Where, by terms of



## Assessments; sale to pay assessments — Act of 1896, §§ 23-26a.

the subscription, subscriber agreed to take the stock and pay all charges and assessments levied by board of directors, held, that company could only recover same by assessment or call. *Same v. Same*, 43 N. J. L. R. 442.

It is no objection to the recovery of installments due on a subscription that since then the name of the company has been changed, and the length and termini of the road materially altered. *Del., etc., R. R. Co. v. Irick*, 23 N. J. Eq. R. (3 Zab.) 321.

The amount recoverable is the balance remaining unpaid with interest from the time the installments were called and became due. *Bordentown, etc., Co. v. Imlay*, 4 N. J. L. R. (1 South.) 285.

When the complainant does equity and pays up the installments already assessed and the costs of the suit at law, the court will protect him against any assessment not levied upon other stockholders. *Yond v. Ins. Co.*, 10 N. J. Eq. R. (2 Stock.) 481.

Suit by the company will not lie until a call for the installment due. *Braddock v. R. R. Co.*, 45 N. J. L. R. (16 Vr.) 363. A call is nothing more than an official declaration that the sums subscribed are required to be paid. *Id.*

It must be shown that the call was made by adequate authority and it must conform to the terms of the subscription. *New Jersey Midland Co. v. Strait*, 35 N. J. L. R. (6 Vr.) 822.]

**Penalty for neglect to pay assessments.**

§ 23. If the owner of any shares shall neglect to pay any sum assessed thereon for thirty days after the time appointed for payment, the treasurer, when ordered by the board of directors, shall sell, at public auction, such number of the shares of the delinquent owner as will pay all assessments then due from him, with interest, and all necessary incidental charges, and shall transfer the shares sold to the purchaser, who shall be entitled to a certificate therefor.

[Board of directors cannot forfeit stock once rightly issued except by the mode provided by the charter. *Downing v. Potts*, 23 N. J. L. R. 66.]

**Notice of sale of shares; how made.**

§ 24. The treasurer shall give notice of the time and place appointed for the sale, and of the sum due on each share, by advertising the same three weeks successively, once in each week, before the sale, in some newspaper published in the county where the corporation is established, and by mailing a notice thereof to the delinquent stockholder, if he knows his post-office address.

**Officers to furnish certificates of payment of stock; certificate to be filed.**

§ 25. The president and secretary, or treasurer, upon payment of each installment of capital stock, and of every increase thereof,

shall make a certificate, stating the amount of the capital so paid, and whether paid in cash or by the purchase of property, stating also the total amount of capital stock, if any, previously paid and reported, which certificate shall be signed and sworn to by the president and secretary or treasurer, and they shall, within ten days after such payment, cause the certificate to be filed in the office of the secretary of State.

Liability for failure by officers. § 26, post. Increase of capital stock, how made. §§ 27, 28, post. Liability for false certificate. § 52, post. Statement to contain address of New Jersey office and name of agent. § 43a, post. (Act of April 20, 1898, P. L. 410.)

[Above section requires a certificate to be made for payment of last installment of the amount upon which business is commenced, and also upon payment of last installment of any increase thereof between the amount upon which business is commenced and the limit of the original certificate. *Quimby v. Waters*, 28 N. J. L. R. 533. Where officers certified that the stock had been paid up in cash, when, in fact, it was paid in property of uncertain value they were held liable for the debts of the company. *Id.*; *Waters v. Quimby*, 27 N. J. L. R. 198. Requirements of above section are set up and certificate made within thirty days after the officers have decided that the capital is paid in. *Same v. Same*, 27 N. J. L. R. 297.]

**Penalty for refusal to make such certificate.**

§ 26. If any of said officers shall neglect or refuse to perform the duties required of them in the preceding section for thirty days after written request so to do by a creditor or stockholder of the corporation, they shall be jointly and severally liable for all its debts contracted before the filing of such certificate.

Liability, how enforced. § 92, post.

[No action can be maintained until thirty days after a written request has been made by a creditor or stockholder, of the officers to make a certificate, and their neglect or refusal so to do within that time. *Nassau Bank v. Brown*, 30 N. J. Eq. R. 478. The liability created by this section may be enforced by any creditor who has performed the necessary conditions, by an action at law or by bill in equity in the manner prescribed by sections 92 and 94, post. *Waters v. Quimby*, 27 N. J. L. R. 296; *aff'd*, 28 *Id.* 533.]

**Amendment of certificate of incorporation before payment of capital stock.**

§ 26a. It shall be lawful for the incorporators of any corporation, before the payment of any part of its capital, to record with the clerk of the county in which its original

## Amendment of certificate — Act of 1896, §§ 27, 27a, 28.

certificate of incorporation was recorded, and file with the secretary of State, an amended certificate, duly signed, by the incorporators named in the original certificate of incorporation, and duly acknowledged or proved as required for certificates of incorporation under the act to which this is a supplement, modifying, changing or altering its original certificate of incorporation, in whole or in part, which amended certificate shall take the place of the original certificate of incorporation, and shall be deemed to have been filed and recorded on the date of the filing and recording of the original certificate; Provided, however, That nothing herein shall permit the insertion of any matter not in conformity with the act to which this is a supplement; And provided, however, That this act shall not in any manner affect any proceedings pending in any court; for filing said amended certificate of incorporation, the secretary of State shall charge a fee of twenty dollars; Provided, That where the total authorized capital stock of the corporation is increased by said amended certificate the secretary of State shall charge an additional fee of twenty cents for each one thousand dollars of said increase. (Act of April 20, 1898, § 1; P. L. 1898, p. 407.)

Amendment after payment of capital. § 27, post. Fee on filing amendment. § 114, post. Certificate to contain name of address of New Jersey office and name of agent. § 43a (act of April 20, 1898; P. L. 410), post.

**Original certificate of incorporation may be changed; new certificate to be filed.**

§ 27. Every corporation organized under this act may change the nature of its business, change its name, increase its capital stock, decrease its capital stock, change the par value of the shares of its capital stock, change the location of its principal office in this State, extend its corporate existence, create one or more classes of preferred stock, and make such other amendment, change or alteration as may be desired, in manner following: the board of directors shall pass a resolution declaring that such change or alteration is advisable and calling a meeting of the stockholders to take action thereon; the meeting shall be held upon such notice as the by-laws provide, and in the absence of such provision, upon ten days' notice, given personally or by mail; if two-thirds in interest of each class of the stockholders having voting powers shall vote in favor of such amendment, change or alteration, a certificate thereof shall be signed by the president and secretary under the corporate seal, acknowledged or proved as in the case of deeds of real estate, and such certificate, together with the written assent, in person or by proxy, of two-thirds in interest of each class of such stockholders, shall be filed in the office of the secretary of State, and upon the filing of the same, the certificate of incorporation shall be deemed

to be amended accordingly; Provided, That such certificate of amendment, change or alteration shall contain only such provision as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment, and the certificate of the secretary of State that such certificate and assent have been filed in his office shall be taken and accepted as evidence of such change or alteration in all courts and places.

Amendment before payment of capital. § 26a, ante. Change of location of principal office. § 27a, post. Certificate to contain address of New Jersey office and name of agent. § 43a (act of April 20, 1898; P. L. 410), post. Fee on filing amendment. § 114, post. Words "insurance," "safe deposit," "trust company," or "bank," not to be inserted by amendment. Act of April 23, 1897, post.

[Where the capital stock is increased, the original holders are first entitled to subscribe for the increased stock in proportion to their holdings. But where new stock is issued for property purchased from which all stockholders will receive the same benefit, original holders cannot insist that new stock shall be issued to them in proportion to their holdings, since section 55 of the act of 1875 (§ 48, post), became a part of the contract between the stockholders. In case the corporation deprives the stockholder of his rights in this behalf, the proper remedy is by an action at law for damages. *Meredith v. N. J. Zinc & Iron Co.*, 37 Atl. Rep. 539.

The location may be changed within the State without the assent of all the stockholders, unless such change is prohibited by the certificate of incorporation. *Stickle v. Liberty Cycle Co.*, 32 Atl. Rep. 708.]

**Corporation may change location of office; resolution to be filed.**

§ 27a. 1. The board of directors of any corporation, organized under the laws of this State, may change the location of the principal office of such corporation within this State to any other place within this State by resolution adopted at a regular or special meeting of such board, by the votes of at least two-thirds of the members of such board; Provided, That no certificate shall be required to be filed of the removal of any office from one point to another in the same town, township or city in this State.

2. Upon the adoption of a resolution as aforesaid, a copy thereof shall be filed in the office of the secretary of State, signed by the president and secretary of such corporation, and sealed with its corporate seal; for filing the said certificate, the secretary of State shall charge a fee of five dollars. (Act of April 8, 1897; P. L. 1897, p. 175.)

**Amendments by corporations under other acts.**

§ 28. Any corporation of this State, whether organized under a special act of incorpora-



## Decrease of capital stock; dividends; dissolution — Act of 1896, §§ 29-31.

tion or under general laws, excepting railroad and canal corporations, and other corporations possessing the right of taking and condemning lands, may increase or decrease its capital stock, change its name, the par value of the shares of its capital stock, or the location of its principal office in or out of this State, and fix any method of altering its by-laws permitted by the act to which this is a supplement in the manner prescribed in the foregoing section, and any corporation may in the same manner relinquish one or more branches of its business, or extend its business to such branches as might have been inserted in its original certificate of incorporation. (Amended by Act of 1898, ch. 92; P. L. 1898, p. 149.)

**Decrease of capital stock; how effected.**

§ 29. The decrease of capital stock may be effected by retiring or reducing any class of the stock, or by drawing the necessary number of shares by lot for retirement, or by the surrender by every shareholder of his shares, and the issue to him in lieu thereof of a decreased number of shares, or by the purchase at not above par of certain shares for retirement, or by retiring shares owned by the corporation or by reducing the par value of shares; and when any corporation shall decrease the amount of its capital stock hereinbefore provided, the certificate decreasing the same shall be published for three weeks successively, at least once in each week, in a newspaper published in the county in which the principal office of the corporation is located; the first publication to be made within fifteen days after the filing of such certificate, and in default thereof the directors of the corporation shall be jointly and severally liable for all debts of the corporation contracted before the filing of the said certificate, and the stockholders shall also be liable for such sums as they may respectively receive of the amount so reduced; Provided, No such decrease of capital stock shall release the liability of any stockholder, whose shares have not been fully paid, for debts of the corporation theretofore contracted, nor effect any reduction of the taxes that may be required to be paid by the charters of corporations incorporated by special acts.

Enforcement of liability of directors. §§ 92, 94, post. Certificate to contain address of New Jersey office and name of agent. § 43a (act of April 30, 1898; P. L. 410), post.

**Unlawful dividends; liability of directors.**

§ 30. No corporation shall make dividends, except from the surplus or net profits arising from its business, nor divide, withdraw, or in any way pay to the stockholders, or any of them, any part of its capital stock, or reduce its capital stock, except according to this act, and in case of any violation of the provisions of this section, the directors under

whose administration the same may happen shall be jointly and severally liable, at any time within six years after paying such dividend, to the corporation and to its creditors, in the event of its dissolution or insolvency, to the full amount of the dividend made or capital stock so divided, withdrawn, paid out or reduced, with interest on the same from the time such liability accrued; Provided, That any director who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may exonerate himself from such liability by causing his dissent to be entered at large on the minutes of the directors, at the time the same was done, or forthwith after he shall have notice of the same, and by causing a true copy of said dissent to be published, within two weeks after the same shall have been so entered, in a newspaper published in the county where the corporation has its principal office.

Liability of directors, how enforced. §§ 92, 94, post. Dividends on preferred and common stock. § 18, ante. Time of making dividends. § 47, post.

[This section, making directors personally responsible for unlawful dividends, does not exonerate stockholders from liability to repay such dividends for the benefit of creditors of the corporation. *Williams v. Bolee*, 38 N. J. Eq. R. 364. When the power of directors is unrestrained either by law or contract, they may make any disposition of profits which they deem judicious. *Park v. Locomotive Works*, 40 N. J. Eq. R. 114; s. c., 3 Atl. Rep. 162. But if they accept this under contract regulating the disposition of profits, they must dispose of them as the contract directs. *Id.* The term "net profits" defined. *Id.* A dividend declared becomes the property of the stockholder. If demanded by him and payment is refused, he may bring an action against the company for money had and received. *King v. R. R. Co.*, 29 N. J. L. R. 82. Directors are agents of the corporation, and have right to declare dividends, and fix time and place of payment, but such time and place must be reasonable. *Id.* They must deposit the dividends in any banking-house of good credit, giving notice to each stockholder of such deposit. *Id.*]

**Voluntary dissolution of corporations; proceedings.**

§ 31. Whenever, in the judgment of the board of directors, it shall be deemed advisable and most for the benefit of such corporation that it should be dissolved, the board, within ten days after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, of which meeting every director shall have received at least three days' notice, shall cause notice of the adoption of such resolution to be mailed to each stockholder residing in the United States, and also beginning within said ten days cause



Surrender of franchise; stock-books; list of stockholders — Act of 1896, §§ 32, 33.

a like notice to be published in a newspaper published in the county wherein the corporation shall have its principal office, at least four weeks successively, once a week, next preceding the time appointed for the same, of a meeting of the stockholders to be held at the office of the corporation, to take action upon the resolutions so adopted by the board of directors, which meeting shall be held between the hours of ten o'clock in the forenoon and three o'clock in the afternoon of the day so named, and which meeting may, on the day so appointed, by consent of a majority in interest of the stockholders present, be adjourned from time to time for not less than eight days at any one time, of which adjourned meeting notice by advertisement in said newspaper shall be given; and if at any such meeting two-thirds in interest of all the stockholders shall consent that a dissolution shall take place and signify their consent in writing, such consent, together with a list of the names and residences of the directors and officers, certified by the president and the secretary or treasurer, shall be filed in the office of the secretary of State, who, upon being satisfied by due proof that the requirements aforesaid have been complied with, shall issue a certificate that such consent has been filed, and the board of directors shall cause such certificate to be published four weeks successively, at least once a week, in a newspaper published in said county; and upon the filing in the office of the secretary of State of an affidavit that said certificate has been so published, the corporation shall be dissolved and the board shall proceed to settle up and adjust its business and affairs; whenever all the stockholders shall consent in writing to a dissolution, no meeting or notice thereof shall be necessary, but on filing said consent in the office of the secretary of State he shall forthwith issue a certificate of dissolution, which shall be published as above provided.

Power to dissolve. § 1, ante. Legislature may dissolve. §§ 4, 5, ante. Dissolution not caused by failure to elect officers. § 41, post. Statement and certificate to contain address of New Jersey office and name of agent. § 43a (act of 1898, April 20; P. L. 410), post. Powers of directors on dissolution. § 54, post. Powers of chancery on dissolution. §§ 56, 57, post. Actions not to abate on dissolution. § 59, post.

[Where a corporation has ceased to do business, and apparently nothing remains to be done but to pay its debts and divide the surplus among the stockholders, it is directors' duty, under above section, to call a stockholders' meeting. *Streit v. Ins. Co.*, 29 N. J. Eq. R. 22. Neither the shareholders nor a court of equity has power to dissolve a corporation or extinguish its charter. In absence of statutory provisions, the franchises can be declared forfeited only at the suit of the State, by a proper proceeding at law. *Benedict v. Const. Co.*, 49 N. J. Eq. R. 23; s. c., 23 Atl. Rep. 485.

#### Incorporators may surrender rights and franchises.

§ 32. The incorporators named in any certificate of incorporation, before the payment of any part of the capital, and before beginning the business for which the corporation was created, may surrender all their corporate rights and franchises, by filing in the office of the secretary of State a certificate, verified by oath, that no part of the capital has been paid and such business has not been begun, and surrendering all rights and franchises, and thereupon the said corporation shall be dissolved.

Liability of officers for false certificates. § 52, post.

#### III. Elections — Stockholders' meeting.

Books containing names of stockholders to be open to inspection; secretary to make list of stockholders.

§ 33. Every corporation shall keep at its principal and registered office in this State the transfer-books in which the transfer of stock shall be registered, and the stock-books, which shall contain the name and address of the stockholders, the number of shares held by them respectively, which shall at all times during the usual hours for business be open to the examination of every stockholder; the directors shall cause the secretary, or other officer designated by them having charge of said books, to make, at least ten days before every election after the first election, a full, true and complete list, in alphabetical order, of all the stockholders entitled to vote at the ensuing election, with the residence of each, and the number of shares held by each, which list shall at all times during the usual hours for business be kept at such principal and registered office, and open to the examination of any stockholder at said office, and if any officer having charge of such books or list shall, upon demand by any stockholder, refuse or neglect to exhibit such books or list, or submit them to examination as aforesaid, he shall for every such offense forfeit the sum of two hundred dollars, one-half thereof to the use of the State of New Jersey and the other half to him who will sue for the same, to be recovered by action of debt in any court of record, together with costs of suit, and the books aforesaid shall be the only evidence as to who are the stockholders entitled to examine such books or list, and to vote at such election; and the board of directors shall produce at the time and place of such election such books and list, there to remain during the election, and the neglect or refusal of said directors to produce the same shall render them ineligible to any office at such election. (Amended by L. 1898, ch. 17, § 3; P. L. 1898, p. 408.)

[The requirement that list of stockholders shall be made out is directory only, and non-compliance

## Election of directors — Act of 1896, §§ 34-36.

with it does not of itself make the election void. *Downing v. Potts*, 23 N. J. L. R. 66. As between parties, no other evidence of transfer of property in the stock will avail against the books upon the right to vote. Election of Cape May, etc., Nav. Co., 51 N. J. L. R. 78; s. c., 16 Atl. Rep. 191. Failure to elect officers at time designated will not work a dissolution. *Bldg. Assn. v. Martin*, 13 N. J. Eq. R. 427.

An election is not legal, if list of stockholders exhibited and acted upon on the day of election is not a true list, and known not to be such by the parties who exhibited, and who voted upon it. *Johnston v. Jones*, 23 N. J. Eq. R. 217. Stockholders who are not such at the day election is held cannot vote, although they were such at the day on which it should have been held. *Id.*

The design of the first part of the section is to furnish to every corporation a knowledge of his cocorporators, and an opportunity of corresponding with them on the affairs of the institution, of the necessity or expediency of a change in its direction, and thereby rescuing the election from the immediate control of the board or of officers whose misconduct or incapacity may have rendered a change necessary. *Downing v. Potts*, 23 N. J. L. R. 66, 72. The list of stockholders does not operate as a registry of voters. The right of a stockholder to vote does not depend upon his name being contained in the list; on the contrary, the statute expressly declares that the books of the corporation shall be the only evidence of whom are stockholders entitled to vote. *Downing v. Potts*, 23 N. J. L. R. 73. See also *Matter of Steamboat Co.*, 44 *id.* 529, 539.]

**Election for directors; regulations.**

§ 34. All elections for directors shall be by ballot unless otherwise expressly provided in the charter or certificate of incorporation. The poll at every such election shall be opened between the hours of nine o'clock in the morning and five o'clock in the afternoon, and shall close before nine o'clock in the evening; the same shall remain open at least one hour, unless all of the stockholders are present in person or by proxy and have sooner voted, or unless all the stockholders waive this provision in writing; the persons receiving the greatest number of votes shall be the directors; Provided, however, That a majority of all the stock issued and outstanding shall be present in person or by proxy. (Amended by ch. 172 of the Laws of 1898, § 4; P. L. 1898, p. 409.)

Elections to be held annually. § 12, ante. First election. § 16, ante. Proxies. § 17, ante, § 36, post. Supreme Court may order new election. § 42, post. Election not held on proper day may be held afterward. § 41, post. Number and residence of directors. § 12, ante. Directors must be stockholders. § 39, post.

**Candidate for director not to be inspector of election.**

§ 35. No person who is a candidate for the office of director shall act as judge, in-

spector or clerk of any election for directors; and if any candidate shall so act and be elected, his election shall be void, and the directors shall not appoint such person a director within twelve months next succeeding; this section shall not apply to the first election of directors.

**One vote for each share; proxy not good after three years.**

§ 36. Unless otherwise provided in the charter, certificate or by-laws of the corporation, at every election each stockholder, whether resident or non-resident, shall be entitled to one vote in person or by proxy for each share of the capital stock held by him, but no proxy shall be voted on after three years from its date; nor shall any share of stock be voted on at any election which has been transferred on the books of the corporation within twenty days next preceding such election.

Stock and transfer-books only evidence of right to vote. § 33, ante. Proxies. § 17, ante. Stockholders may vote notwithstanding hypothecation of stock. § 37, post. Trustee, executor, etc., may vote. § 37, post. Right to vote, power to regulate. § 8, ante.

[Whether it is competent to provide for any qualities in the voting powers of stockholders, unless the power to make such regulations is conferred by the charter, query. In re Election of Directors, 51 N. J. L. R. 78; s. c., 16 Atl. Rep. 191. Neither certificates of stock nor payment therefor are necessary to confer on subscribers the rights and privileges of stockholders. *Storage Co. v. State Board*, 29 Atl. Rep. 160. A subscriber to stock whose subscription is received by directors and certificates issued to him, is entitled to vote at election, even though he has paid nothing for his stock. *Downing v. Potts*, 23 N. J. L. R. 66. Stockholders desiring to vote by proxy must furnish agent with sufficient written evidence of the right to act for him. But such power of attorney need not be in any prescribed form, nor be executed with any particular formality. Inspectors of election must have reasonable grounds for rejecting a proxy. In re Election of Directors, 44 N. J. L. R. 530.

**Right to vote.**

The fact that a stockholder is indebted to the company on his subscription does not impair his right to vote. *Savage v. Hall*, 17 N. J. Eq. R. 142.

At common law, unless the charter otherwise provided, a stockholder was entitled to but one vote, and that vote he was required to cast in person. Proxies were not permitted. *Taylor v. Griswold*, 14 N. J. L. R. 222. This decision brought about the statute providing that each stockholder should be entitled to one vote for each share held by him, and authorizing the use of proxies, limiting them, however, to three years. *Cone v. Russell*, 48 N. J. Eq. R. 208, 213; s. c., 21 Atl. Rep. 847.

## Election of directors — Act of 1896, §§ 37-40.

A voting trust was held void in *White v. Tire Co.*, 58 N. J. Eq. R. 178, since it did not by its terms extend to certain shares of the company issued directly to persons who were not parties to the trust. In *Cone v. Russell*, 48 N. J. Eq. R. 308, 215; s. c., 21 Atl. Rep. 847, the vice-chancellor says: "The conclusion that the contract (creating a voting trust) was void as against public policy does not reach so far as to necessarily forbid all pooling or combining of stock, where the object is to carry out a particular policy with the view to promote the best interests of all the stockholders. The propriety of the objects validates the means and must affirmatively appear."

### Executors, etc., may vote; power to vote on hypothecated stock.

§ 37. Every person holding stock as executor, administrator, guardian or trustee, or in any other representative or fiduciary capacity, may represent the same at all meetings of the corporation, and may vote thereon as a stockholder, and every person who shall pledge his stock as collateral security may, nevertheless, represent the same at all such meetings, and may vote thereon as a stockholder, unless in the transfer to the pledgee on the books of the corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee or his proxy may represent said stock and vote thereon.

Hypothecation of stock must be stated in transfer. § 20, ante.

[Under above section, an executor or administrator is entitled to vote for directors in stock standing on company's books in name of the testator or intestate. A foreign executor under letters granted at testator's domicile may transfer stock and receive dividends, and on producing an exemplified copy of the letters is entitled to vote on the stock. Election of Cape May, etc., Co., 51 N. J. L. R. 78; s. c., 16 Atl. Rep. 191.]

### Stock owned by corporation not to be voted on.

§ 38. Shares of stock of a corporation belonging to said corporation shall not be voted upon directly or indirectly.

[Stock belonging to the company cannot be voted upon, in choosing directors, by anybody either directly or indirectly. *McNeely v. Woodruff*, 13 N. J. L. R. 352; In re St. Lawrence Steamboat Co., 44 id. 539. See also *Hilles v. Parrish*, 14 N. J. Eq. R. 380. A national bank cannot, even by specific provisions for the purpose in its articles of association or in its by-laws, acquire a lien on its own stock held by its debtor. *R. R. Co. v. Iron Co.*, 38 N. J. Eq. R. 340.

A contract by a company to accept its stock in part payment of the price of lands was not ultra vires per se. *Thompson v. Moxey*, 47 N. J. Eq. R. 538; 20 Atl. Rep. 854.

A corporation has no lien on its stock held by its debtor. *D., L. & W. R. R. Co. v. Oxford Iron Co.*, 38 N. J. Eq. R. 340.]

### Stockholders only can be directors.

§ 39. No person shall be elected a director of any corporation issuing stock unless he shall be, at the time of his election, a bona fide holder of some of the stock thereof; and any director ceasing to be a bona fide holder of some of the stock thereof shall cease to be a director; any corporation may, by its certificate of incorporation or by-laws, determine how many shares a person shall hold to qualify him to be a director.

[One refusing to be a director or serve as such is not a director though elected. *Whittaker v. Bank*, 29 Atl. Rep. 203. Above section construed. In re St. Lawrence Steamboat Co., 44 N. J. L. R. (15 Vr.) 530. No person can be elected a director who is not a bona fide holder of stock at time of such election, and who ceases to be a director upon disposing of his stock. *Wright v. Bank*, 52 N. J. Eq. R. 392; s. c., 28 Atl. Rep. 719. A director of a corporation ceases to be such on making an assignment for benefit of his creditors. *Id.* This case was reversed on appeal, sub nomine *Kuser v. Wright*, 52 N. J. Eq. R. 825; s. c., 31 Atl. Rep. 397, where it was held that after the assignment the director ceases to be a director de jure, and the company may declare his office vacant and elect his successor, but as to third persons dealing in good faith with the company, without notice of any infirmity in the title of the director, he must be regarded as a director de facto.

Where one is made a stockholder of a corporation solely to make up the number of directors required by law, his right to hold office cannot be impeached for fraud at the instance of one who was a consenting party to his admission into the company and his election to the office. In re Leslie, 58 N. J. L. R. 609, 618; s. c., 33 Atl. Rep. 954.

This section is held not to apply to the first directors of a consolidated company. *Camden, etc., Co. v. Burlington Carpet Co.*, 33 Atl. Rep. 954.

A person may be qualified to be a director, whose vote cannot be received at the election by reason of the transfer of stock to him not being entered on the books, and he may be disqualified for the office of director for reasons aliunde. If the stock was legally issued, and the legal title is in the stockholder, he is prima facie capable of being a director, and his right to be director, in virtue of his legal title to such stock, can be impeached only by showing that title was put in him colorably, with a view to disqualify him to be a director for some dishonest purpose, in furtherance of some fraudulent scheme touching the organization or control of the company. In re St. Lawrence Steamboat Co., 44 N. J. L. R. (15 Vr.) 529.]

### Stock-books determine who may vote.

§ 40. In case the right to vote upon any share of stock shall be questioned, the inspectors of the election shall refer to the stock-books of the corporation to ascertain who are the stockholders, and in case of a discrepancy between the books, the trans-



## Election of directors; investigation by court — Act of 1896, §§ 41, 42.

fer-book shall control and determine who are entitled to vote.

Stock and transfer-books must be kept in registered office. § 33, ante. Books to be exhibited. § 33, ante.

[The evidence of being a stockholder comprises the stock ledger, certificate-book and transfer-book, but in case of dispute the transfer-book must control. *Downing v. Potts*, 23 N. J. L. R. (3 Zab.) 66.

Representatives, executors, guardians and the like, must be permitted to vote on the shares they represent upon producing satisfactory evidence of their representative capacity. Election of Cape May, etc., Nav. Co., 51 N. J. L. R. 78; s. c., 16 Atl. Rep. 191.

Inspectors of election cannot reject a vote offered by proxy because the written proxy was not acknowledged or proved. If the proxy is regular in form and apparently the act of the stockholder, the inspectors should receive the votes offered under it. Election of St. Lawrence Steamboat Co., 44 N. J. L. R. 529.]

**Election not held on proper day; failure to elect not to dissolve.**

§ 41. If the election for directors of any corporation shall not be held on the day designated by the act or certificate of incorporation or by-laws the directors shall cause the election to be held as soon thereafter as conveniently may be; no failure to elect directors at the designated time shall work any forfeiture or dissolution of the corporation, but any justice of the supreme court may summarily order an election to be held upon the application of any stockholder, and may punish the directors for contempt of court for failure to obey the order.

Elections to be held annually. § 12, ante. Meetings, manner of calling and conducting. § 17, ante. First meeting, how called. § 16, ante. Meetings to be held in State. § 44, post. Supreme Court to investigate complaints touching elections. § 42, post.

[Stockholders who are not such at the day an election is held cannot vote, although they were stockholders at the day on which it should have been held. *Johnston v. Jones*, 23 N. J. Eq. R. 217. Stockholders may compel directors, upon mandamus, to do their duty immediately. *M'Neely v. Woodruff*, 13 N. J. L. R. 352.

The section was not intended to impair the charter right at any time, but to hasten the directors in using it, and by putting it in the power of stockholders to compel them to do it, if they should neglect it. Id.

The right of a stockholder to have a new election of directors in accordance with the by-laws cannot be disputed on the ground that the stockholder bought his stock with the money of rival companies, and intends to use his legal rights, as

the holder of a majority of the capital stock, for purposes detrimental to the interests of the corporation, and that the proposed election of directors is a step toward the illegal control of the property and business of the corporation. *Camden & A. R. R. Co. v. Elkins*, 37 N. J. Eq. R. (10 Stew.) 274.]

**Supreme court may investigate elections.**

§ 42. The supreme court, upon application of any person who may be aggrieved by or complain of any election, or any proceeding, act or matter in or touching the same, reasonable notice having been given to the adverse party, or to those who are to be affected thereby, of such intended application, shall proceed forthwith, and in a summary way hear the affidavits, proofs and allegations of the parties, or otherwise inquire into the matter or causes of complaint, and thereupon establish the election so complained of, or order a new election, or make such order, and give such relief in the premises as right and justice may require; the court may, if the case require it, either order an issue to be made up in manner and form as it may direct, to try the rights of the respective parties to the office or franchise in question, or may give leave to exhibit, or direct the attorney-general to exhibit, an information in the nature of a quo warranto in relation thereto.

Regulations concerning elections. §§ 33 et seq., ante. Elections to be held annually. § 12, ante.

[Stockholders have a standing in court to test regularity of an election of directors and the legality of acts of inspectors of the election. In re *St. Lawrence Steamboat Co.*, 44 N. J. L. R. 529. Where votes wrongfully rejected would have given the persons for whom such votes were tendered merely a majority of the votes offered at the election, the practice is to set aside the election and to order a new one. In re *Election of Directors*, 51 N. J. L. R. 78; s. c., 16 Atl. Rep. 191.

The inquiry before the court is limited to the consideration whether or not the election complained of has been conducted according to the statutory provisions. In re *Leslie*, 58 N. J. L. R. 609; s. c., 33 Atl. Rep. 954.

A court of law is the proper and only competent tribunal to determine the regularity of an election, or to declare an office forfeited, to which any one has been duly elected. *Johnson v. Jones*, 23 N. J. Eq. R. 216, 226; *Bank v. Burnett Mfg. Co.*, 32 N. J. Eq. R. 236, 239.

Where the persons obtained their offices by breach of trust, fraud and breach of agreement, the Court of Chancery has jurisdiction of the matter for the purpose of restraining the breach of trust and any acts of such breach that may work irreparable injury, and for the purpose of compelling them specifically to perform their contract. *Kean v. Union Water Co.*, 52 N. J. Eq. R. 813; s. c., 31 Atl. Rep. 282.]

List of officers; meetings, where held — Act of 1896, §§ 43, 43a, 44.

**List of officers and directors to be filed annually.**

§ 43. Every corporation, foreign or domestic, authorized to transact business in this State, shall file in the office of the secretary of State annually, within thirty days after every election of directors, a statement authenticated by the signatures of the president and secretary, containing the names of all the directors and officers, with the date of election or appointment, term of office, residence and post-office address of each, the character of its business, the location, giving the street and number, if any, of its principal office in this State, and the name of the agent in charge of said office, upon whom process against the corporation may be served; and for this purpose the secretary of State shall furnish blanks in proper form and safely keep in his office all such statements, and issue to the corporations filing the same his certificate thereof, and also prepare an alphabetical index thereof, which statements and index shall be submitted to the inspection of persons interested at all proper hours; and every corporation failing to comply with the provisions of this section shall forfeit to the State two hundred dollars, to be recovered with costs in an action of debt to be prosecuted by the attorney-general, who shall prosecute such actions whenever it shall appear that this section has been violated; this section shall not apply to any corporation which is required to file a similar statement in the office of the commissioner of banking and insurance.

Liability of officers for false certificates. § 52, post. Certificate to state address of New Jersey office and give name of agent. § 43a (act of April 20, 1898, P. L. 410), post.

**Every certificate and report must give address of New Jersey office and name of agent.**

§ 43a. Every certificate, report or statement now or hereafter required by any law of this State to be made to any officer or department of this State, or to be published, filed or recorded by any corporation, domestic or foreign, shall, in addition to the other matter required by law, set forth the location (town or city, street and number, if number there be) of its principal office in this State, and the name of the agent therein and in charge thereof, and upon whom process against the corporation may be served. No certificate, statement or report shall hereafter be received, filed or recorded by any officer or in any office of this State unless the same shall comply with the foregoing provisions. Such office of any domestic corporation so registered shall be and be deemed the office and post-office address of such domestic corporation, its officers, directors and stockholders, and whenever by the provisions of any law of this State any notice is re-

quired to be given to the corporation, its officers, stockholders or directors, such notice shall be sent by mail or otherwise as the law may require to such registered office, and such notice so given shall be and be deemed sufficient notice. Whenever by any law of this State, in any such certificate, report or statement, the residence or post-office address of any incorporator, stockholder, director or other officer is required to be set forth or given, it shall be and be deemed a full compliance with such provision to give as such post-office address the post-office address of the registered office of the company within this State. (Act of April 20, 1898, P. L. 1898, p. 410.)

**Meetings of stockholders and directors, where held; books, where kept; court of chancery may order books to be brought within the State.**

§ 44. In all cases where it is not otherwise provided by law, the meetings of the stockholders of every corporation of this State shall be held at its principal office in this State; the directors may hold their meetings, and have an office, and keep the books of the corporation (except the stock and transfer-books) outside of this State, if the by-laws or certificate of incorporation so provide; every corporation shall maintain a principal office in this State, and have an agent in charge thereof, wherein shall be kept the stock and transfer-books for the inspection of all who are authorized to see the same, and for the transfer of stock; the court of chancery or the supreme court, or any justice thereof, may, upon proper cause shown, summarily order any or all of the books of said corporation to be forthwith brought within this State, and kept therein at such place and for such time as may be designated in such order, and the charter of any corporation failing to comply with such order may be declared forfeited by the court making such order, and it shall thereupon cease to be a corporation, and all its directors and officers shall be liable to be punished for contempt of court for disobedience of such order.

Meetings of stockholders, manner of calling and conducting. § 17, ante. Must be called when company is insolvent. § 63, post. May be called by three stockholders. § 46, post. Books to be exhibited. § 33, ante. Books evidence of right to vote. §§ 33, 40, ante.

[It seems that boards of directors of New Jersey corporations may hold meetings outside the State. *Coe v. Ry. Co.*, 31 N. J. Eq. R. 106; *Parsons v. Lent*, 34 id. 67. Entries in books of corporation are, as a general rule, competent evidence of its proceedings; but such entries are not notice to third persons so as to create an equitable estoppel arising from a consent to the proceedings. *Wetherbee v. Baker*, 35 N. J. Eq. R.

Display of name; call of meetings; dividends — Act of 1896, §§ 45-47.

501; *Meadow Co. v. Christ Church*, 22 N. J. L. R. 425.

If there is fair reason to believe that party asking for an inspection of corporate books intends to make an improper use of them, and on that ground his request is denied, the court will not aid him by mandamus. *State v. Einstein*, 46 N. J. L. R. 479.

Independent of above section, a private corporation, whose charter has been granted by one State, cannot hold meetings and pass votes in another. *Hilles v. Parrish*, 14 N. J. Eq. R. 380. The provision that all companies incorporated under laws of this State, whose charters do not designate their place of meeting, shall hold their meetings in this State, does not apply to companies whose charters are not subject to alteration or repeal. *Coe v. Ry. Co.*, *supra*.

The authority given by this section can be exercised only in the special case of a corporation unlawfully keeping its books out of the State. It cannot properly be construed to confer upon the court any power over corporations which it did not possess before the passage of the act, except that which is specifically given. *Stettauer v. Scranton Construction Co.*, 42 N. J. Eq. R. 46; *s. c.*, 6 Atl. Rep. 303. And see *Laurel Springs Land Co. v. Fougerey*, 50 N. J. Eq. R. 756; *s. c.*, 26 Atl. Rep. 886.

On a petition to have the books of a corporation brought into the State for inspection, it is no defense that petitioner was president and director of the corporation, and presumed to already know all that could be learned from an inspection of the books. *Mitchell v. Rubber Co.*, 24 Atl. Rep. 407. Where the petitioner had a right to examine the books of the corporation personally, a refusal to allow his authorized attorney to examine them was a denial of petitioner's right. *Id.*

The statutory authority to order a company to bring its books into the State does not embrace, by implication, the authority to order it to also bring all its papers and memoranda. *Huyler v. Craggin Cattle Co.*, 42 N. J. Eq. R. 139, 141; *s. c.*, 7 Atl. Rep. 521.

Directors' minutes are evidence of a contract, though written up after a meeting. They need not be in the handwriting of the secretary; if entered under his direction and approved by him they are valid. *Wells v. Rahway Rubber Co.*, 19 N. J. Eq. R. 402.

The minute-book of a corporation is competent evidence in suits between stockholders to show the acts of the corporation, but is not competent evidence of any agreement made by the stockholders as individuals. *Black v. Shreve*, 13 N. J. Eq. R. 455.]

#### Name to be displayed at office.

§ 45. The name of every corporation shall be at all times conspicuously displayed at the entrance of its principal office in this State, and in default thereof the directors shall be jointly and severally liable to a penalty of two hundred dollars, to be recovered with costs, by the State, before any court of competent jurisdiction, by action to be prosecuted by the attorney-general; and

they shall jointly and severally be liable to a like penalty for every thirty days' additional default from and after the service of process in the first action, to be recovered in like manner.

#### Stockholders may call meeting.

§ 46. Whenever, for any reason, a legal meeting of the stockholders of any corporation cannot be otherwise called, three or more stockholders having voting powers may call such meeting by publishing ten days' notice of the time, place and purposes of the meeting in a newspaper published in the county in which its principal office in this State is located, and mailing such notice to all stockholders whose post-office address is known or can be ascertained; a meeting called as aforesaid shall be a legal meeting of the corporation, and if there be no officers present, the stockholders may elect officers for the meeting; and the secretary of the meeting shall record the proceedings thereof in the book of minutes of the corporation.

Meetings, manner of calling and conducting. § 17, *ante*. Quorum at meetings. § 17, *ante*. To be held within the State. § 44, *ante*. Meetings must be called when company is insolvent. § 63, *post*.

#### IV. Dividends — Payment of Capital Stock.

##### Dividends to be declared annually.

§ 47. The directors of every corporation created under this act shall, in January in each year, unless some specific day or days for that purpose be fixed in its charter or by-laws, and in that case then on the days so fixed, after reserving over and above its capital stock paid in, as a working capital for said corporation, such sum, if any, as shall have been fixed by the stockholders, declare a dividend among its stockholders of the whole of its accumulated profits exceeding the amount so reserved, and pay the same to such stockholders on demand; Provided. That the corporation may in its certificate of incorporation or in its by-laws give the directors power to fix the amount to be reserved as a working capital.

Dividends on preferred and common stock. § 18, *ante*. To be made only from profits or surplus. § 30, *ante*.

[The powers of directors, except when restrained by contract or by statute, over the gains of the business is absolute so long as they act in the exercise of an honest judgment. They may reserve what they deem necessary or judicious for repairs, improvement and contingencies before making a dividend. *Park v. Grant Locomotive Works*, 40 N. J. Eq. R. 114; *s. c.*, 3 Atl. Rep. 162.

This case was decided under the act of 1875. Under the present section the stockholders are



## Payments for stock — Act of 1896, §§ 48, 49.

to fix the amount reserved as a working capital. If no such amount is fixed it is the duty of the directors to divide the whole of the accumulated profits.

Suit to enforce the declaration of a dividend must be in equity, and must be generally in the name of the corporation. But where the corporation is a defendant and the majority of directors are parties charged with fraud in this very respect, the suit will proceed to a decree upon the complainant's rights. *Laurel Sp. Land Co. v. Fougerey*, 50 N. J. Eq. R. 756; s. c., 26 Atl. Rep. 880.

When a dividend is declared it becomes a debt due from the corporation to the individual stockholder, and after demand of payment, an action at law may be maintained for its recovery. *Kling v. Paterson & H. R. R. Co.*, 29 N. J. L. R. 504. The directors may fix the time and place of payment, which must be reasonable. They may deposit the dividend in a bank of good credit, giving notice thereof to stockholders. *Id.*

If directors omit to distribute dividend to certain shares of stock, the owner of such shares can maintain assumpsit against the company for breach of contract which the law implies from the relationship of the parties, that an equal distribution of dividends will be made. *Jackson v. Newark Plank-Road Co.*, 31 N. J. L. R. 277.

Dividends on preferred stock can only be paid out of the profits; and this is so even when the stock is issued under a guaranty that a dividend of a certain sum shall be paid annually. *McGregor v. Iron Co.*, 33 N. J. Eq. R. (6 Stew.) 181.]

**Stock to be paid in money, except as hereinafter provided; no loan of money to a stockholder or officer.**

§ 48. Nothing but money shall be considered as payment of any part of the capital stock of any corporation organized under this act, except as hereinafter provided in case of the purchase of property, and no loan of money shall be made to a stockholder or officer thereof; and if any such loan be made the officers who make it, or assent thereto, shall be jointly and severally liable, to the extent of such loan and interest, for all the debts of the corporation until the repayment of the sum so loaned.

Stock assessable until fully paid up. §§ 21 et seq., ante. Certificate to be filed when stock fully paid. §§ 25, 26, ante. Stock partly paid, holder liable for balance. §§ 21, 22, ante. Property purchased with stock. § 49, post.

[Courts have inflexibly enforced the rule that payment of stock subscription is good as against creditors, only where payment has been made in money, or money's worth. *Wetherbee v. Baker*, 35 N. J. Eq. R. 502. Incorporators having agreed to give 60 per cent. of the stock to a person for two patents, directors are justified in refusing to issue such stock, one patent not having been perfected, and the articles made under the other being worthless, and on such refusal court of

equity will not decree specific performance of such contract. *Edgerton v. The Electric, etc., Co.*, 50 N. J. Eq. R. 354; s. c., 24 Atl. Rep. 540.

An agreement on the part of a corporation that a subscriber for stock shall be secured as to part of his investment by mortgage on the corporation's property is void as to creditors of the corporation. *Boney v. Williams*, 38 Atl. Rep. 189.]

**Property may be purchased and paid for in stocks.**

§ 49. Any corporation formed under this act may purchase mines, manufactories or other property necessary for its business, or the stock of any company or companies owning, mining, manufacturing or producing materials, or other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be full-paid stock and not liable to any such further call, neither shall the holder thereof be liable for any further payment under any of the provisions of this act; and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased shall be conclusive; and in all statements and reports of the corporation to be published or filed this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the fact.

Power to acquire and hold property. §§ 1, 6, ante. Purchase of certain property by certain corporations. § 50, post.

[Transactions under above section will be upheld only where the agreement to purchase property and pay for it in stock has been made in good faith, and the property taken at a fair bona fide valuation. *Wetherbee v. Baker*, 35 N. J. Eq. R. 501. When a corporation, by virtue of its charter, pays for property purchased with its capital stock, such sale cannot be set aside, in absence of fraud, on ground that value of such property was not equal to value of the stock. *Bickley v. Schlag*, 46 N. J. Eq. R. 533; s. c., 20 Atl. Rep. 250; *Colt v. Amalgamating Co.*, 119 U. S. 343; s. c., 7 Sup. Ct. Rep. 231.

An individual creditor cannot bring an action in his own behalf against a stockholder upon the ground that the property for which the stock was issued was not of the value of the stock. All such suits must be by a general creditor's bill. *Wetherbee v. Baker*, supra.

Where shares were issued for property at a very excessive valuation, the transaction was held to be dishonest, and that the shares were not fully paid. *Hebberd v. Southwestern Cattle Co.*, 36 Atl. Rep. 122. There should be an approximation at least in true value of the thing purchased to the amount of the stock which it is supposed to represent. *Edgerton v. Electric Improvement Co.*, 50 N. J. Eq. R. 354; s. c., 24 Atl. Rep. 540. See also *Rural Homestead Co. v. Wiues*, 54 N. J. Eq. R. 668; s. c., 35 Atl. Rep. 896; *Meredith v. N. J. Zinc & Iron Co.*, 37 id. 539.

## Stock in other corporations; false certificates — Act of 1896, §§ 50-53.

The good-will of a business is property, and stock may be issued for it. And one who participated in and approved the method of valuation of such good-will cannot afterward claim that the good-will so bought by the corporation was overvalued. *Washburn v. National Wall Paper Co.*, 81 Fed. Rep. 17.

**Rights of promoters.**

It is incumbent upon the promoter of a corporation, if he wishes to sell to it property of his own, to make full and complete disclosure of his interest and position with respect to that property, and not having done so he cannot retain any profit which he has made out of the company. *Plaquemines Fruit Co. v. Buck*, 52 N. J. Eq. R. 219; s. c., 27 Atl. Rep. 1094.

Where a promoter has a mere option to purchase lands, a one-sided contract which could not be enforced against him, and he contracts to sell those lands to his company, the transaction is presumably fraudulent, and he is liable for the profits made. *Woodbury Heights Land Co. v. Loudenslager*, 35 Atl. Rep. 436.]

**Certain corporations may take stock in certain others.**

§ 50. Corporations having for their object the building, constructing or repairing of railroads, water, gas or electric works, tunnels, bridges, viaducts, canals, hotels, wharves, piers or any like works of internal improvement or public use or utility, may subscribe for, take, pay for, hold, use and dispose of stock or bonds in any corporations formed for the purpose of constructing, maintaining and operating any such public works; and the directors of any such corporation formed for the purpose of constructing, maintaining and operating any public work of the description aforesaid may accept in payment of any such subscription, or purchase, real or personal property, necessary for the purposes of such corporation, or work, labor and services performed or materials furnished to or for such corporation to the amount of the value thereof, and from time to time issue upon any such subscription or purchase, in such installments or proportions as such directors may agree upon, full-paid stock in full or partial performance of the whole or any part of such subscription or purchase, and the stock so issued shall be full-paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payments, and in all statements and reports of the corporation to be published or filed this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported in this respect according to the fact.

Any corporation may deal in stock of any other, and may exercise rights of ownership over the same.

§ 51. Any corporation may purchase, hold, sell, assign, transfer, mortgage, pledge or

otherwise dispose of the shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations of this or any other State, and while owner of such stock may exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

Proxies at stockholders' meetings. §§ 17, 36, ante.

[A corporation having power to take and dispose of the securities of another corporation may guarantee their payment if it disposes of them to another party in payment of its own debt. *Ellerman v. Chicago, etc., Ry. Co.*, 49 N. J. Eq. R. (4 Dick.) 217; s. c., 23 Atl. Rep. 287.

A corporation may vote shares in another corporation in which it is a stockholder by a proxy duly authorized. *State v. Rohlfss*, 19 Atl. Rep. 1099.]

**False certificates or public notice by officers; penalty.**

§ 52. If any certificate made, or any public notice given by the officers of any corporation, in pursuance of the provisions of this act, shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the corporation contracted while they were stockholders or officers thereof, as a penalty enforceable in the courts of this State only.

Liabilities, how enforced. §§ 92, 94, post.

[The certificate of incorporation is not within the meaning of the term "certificate," as used in this section. *Thompson-Houston Electric Co. v. Murray*, 37 Atl. Rep. 443.

The personal liability prescribed by this section may be enforced by any creditor whose contract arose while such officers were stockholders or officers of the company, by an action at law, and it is not necessary to proceed by general creditors' bill. *Wetherbee v. Baker*, 35 N. J. Eq. R. 501. No sale can be had under an execution against an officer until judgment has been obtained against the corporation, and returned unsatisfied. *Id.*

In an action founded on the falsehood of a certificate made, sworn to and recorded as prescribed in section 30 of the act of 1875, the officers are precluded from alleging in defense that such certificate was false and therefore unnecessary, and not in pursuance of the act. *Waters v. Quimby*, 27 N. J. L. R. 296; 28 *id.* 533.]

**V. Winding Up.**

Dissolved corporations to continue existence for winding up business.

§ 53. All corporations, whether they expire by their own limitation or be annulled by the legislature or otherwise dissolved, shall be continued bodies corporate for the

purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property and to divide their capital, but not for the purpose of continuing the business for which they were established.

Corporate existence, duration of. §§ 8, 10, ante. Extension of corporate existence. § 27, ante, §§ 119, 120, post. Voluntary dissolution. §§ 31, 32, ante. Dissolution by legislature. §§ 4, 5, ante.

[In a suit by stockholders of a dissolved corporation against the directors for mismanagement of its affairs, the corporation should be made a party by virtue of this section. *Camp v. Taylor*, 19 Atl. Rep. 968.

An agreement to transfer the stock and property of a corporation does not affect its legal existence, nor will the actual transfer of all the real and personal estate of the corporation, including the stock itself, extinguish its charter. *Zinc Co. v. Franklinit Co.*, 13 N. J. Eq. R. (2 Beas.) 323.

Stockholders cannot extinguish the corporate charter or dissolve the corporation, and a court of equity cannot accomplish a similar result at their instance. In the absence of statutory provisions, the franchise can be declared forfeited and extinguished only at the suit of the State in an appropriate proceeding at law. *Benedict v. Columbus Const. Co.*, 49 N. J. Eq. R. (4 Dick.) 717.]

**Directors shall be trustees upon dissolution.**

§ 54. Upon the dissolution in any manner of any corporation the directors shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell and convey the property and divide the moneys and other property among the stockholders, after paying its debts, as far as such moneys and property shall enable them; they shall have power to meet and act under the by-laws of the corporation and, under regulations to be made by a majority of said trustees, to prescribe the terms and conditions of the sale of such property, and may sell all or any part for cash, or partly on credit, or take mortgages and bonds for part of the purchase price for all or any part of said property.

Distribution of property of dissolved corporations. § 58, post. Liens of laborers and mechanics. §§ 83, 84, post. Distribution of assets of insolvent corporation. § 86, post. Powers and liabilities of directors as trustees. § 53, post. Disposition of proceeds. § 58, post.

[The Court of Appeals of New York in construing this section held that it did not constitute the directors and managers trustees to defend suits in its name, where the charter had expired by limitation. *Sturges v. Vanderbilt*, 73 N. Y. 385.

The power of the chancellor to interpose and take from the directors the power to close up the business of a corporation and put its affairs in the hands of a receiver is a discretionary power, to be exercised only on good cause shown. *Newfoundland R. R. Const. Co. v. Schack*, 40 N. J. Eq. R. (13 Stew.) 222.]

**Their powers and liabilities.**

§ 55. The directors, constituted trustees as aforesaid, shall have authority to sue for and recover the aforesaid debt and property, by the name of the corporation, and shall be suable by the same name, or in their own names or individual capacities, for the debts owing by such corporation, and shall be jointly and severally responsible for such debts, to the amount of the moneys and property of the corporation which shall come to their hands or possession as such trustees.

Liability of directors, how enforced. §§ 92, 94, post. Acts of majority valid. § 73, post. Disposition of proceeds. § 58, post.

**Court of chancery may appoint receiver.**

§ 56. When any corporation shall be dissolved in any manner whatever, the court of chancery, on application of any creditor or stockholder at any time, may either continue the directors trustees as aforesaid, or appoint one or more persons to be receivers of such corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation, with power to prosecute and defend, in the name of the corporation or otherwise, all suits necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by such corporation, if in being, that may be necessary for the final settlement of its unfinished business; and the powers of such trustees or receivers may be continued as long as the court shall think necessary for such purposes.

Disposition of proceeds. § 58, post. Receivers of insolvent corporations. §§ 65 et seq., post. Receiver may be removed. § 73, post. Actions against receiver not to abate by his death. § 80, post. Receiver may sell franchise. § 82, post.

[On the appointment of a receiver of an insolvent corporation, its title to its property is divested by force of law. *Freeholders v. Bank*, 29 N. J. Eq. R. 268; *Same v. Same*, 30 id. 311. The power of the chancellor to close up the business of a corporation and put its affairs in hands of a receiver is a discretionary power to be exercised only on good cause shown. *Const. Co. v. Schack*, 40 N. J. Eq. R. 223.

Putting a corporation in charge of a receiver does not work its dissolution. The corporation continues until its dissolution is effected either by surrender or judicial decision. Meanwhile the corporation exists with all its franchises exercisable by the receiver, subject to all the duties,



obligations and liabilities that rested upon the corporation itself. *Kirkpatrick v. Assessors*, 57 N. J. L. R. (28 Vr.) 53; s. c., 29 Atl. Rep. 442.]

#### Jurisdiction of court of chancery.

§ 57. The court of chancery shall have jurisdiction of said application and of all questions arising in the proceedings thereon, and may make such orders and decrees therein as justice and equity shall require.

#### Duties of trustees or receivers.

§ 58. The said trustees or receivers shall pay ratably, as far as its moneys and property shall enable them, all the creditors of the corporation who prove their debts in the manner directed by the court; and if any balance remain after the payment of such debts and necessary expenses, the same shall be distributed among the stockholders.

[New Jersey does not possess the common-law prerogative of the crown to have its debts paid in preference to the debts of other corporators. *Freeholders v. Bank*, 29 N. J. Eq. R. 268; *Same v. Same*, 30 id. 311.]

#### Actions shall not abate on dissolution.

§ 59. Any action, now pending or to be hereafter begun, against any corporation which may become dissolved before final judgment, shall not abate by reason thereof, but no judgment shall be entered therein except upon notice to the trustees or receivers of the corporation.

#### Copy of decree of dissolution to be filed with secretary of State.

§ 60. A copy of every decree or judgment dissolving a corporation or forfeiting its charter shall be forthwith filed by the clerk of the court in the office of the secretary of State, and a note thereof shall be made by the secretary of State on the charter or certificate of incorporation, and in the index thereof, and be published by him in the annual volume of laws.

#### VI. Execution against Corporation.

##### Schedule of property to be furnished to officer having writ of execution.

§ 61. Every agent or person having charge or control of any property of a corporation, on request of any public officer, having for service a writ of execution against it, shall furnish to him the names of the directors and officers thereof, and a schedule of all its property, including debts due or to become due to it, so far as he may have knowledge of the same.

##### Execution may be satisfied by any debts due the corporation.

§ 62. If any officer, holding an execution, shall be unable to find other property be-

longing to the corporation liable to execution, he or the judgment creditor may elect to satisfy such execution, in whole or in part, by any debts due to the corporation; and it shall be the duty of any agent or person having custody of any evidence of such debt, to deliver the same to the officer, for the use of the creditor, and such delivery, with a transfer to the officer in writing, for the use of the creditor, and notice to the debtor, shall be a valid assignment thereof; and such creditor may sue for and collect the same in the name of the corporation, subject to such equitable set-offs on the part of the debtor as in other assignments; and every agent or person who shall neglect or refuse to comply with the provisions of this and the last preceding section, shall be himself liable to pay to the execution creditor the amount due on said execution, with costs.

Enforcement of liability of officers. §§ 92, 94, post. Execution against corporation to be returned unsatisfied. § 94, post.

[The property of a corporation which is a judgment debtor cannot be reached under supplementary proceedings. *Connor v. Todd*, 48 N. J. L. R. (19 Vr.) 361. The language of the Execution Act clearly indicates that the legislature intended to provide means for compelling satisfaction of judgments against natural persons, and that claims against corporations were not within its contemplation. *Id.*]

#### VII. Insolvency.

##### Duties of directors in case of insolvency.

§ 63. Whenever any corporation shall become insolvent, the directors, within ten days thereafter, shall call a meeting of the stockholders, and lay before them for inspection and examination all the books of accounts, by-laws and minutes of the corporation, and exhibit a full and true statement of all its estate, funds and property, and of all the debts due and owing to it, and by whom, and of all the debts owing by it, and to whom, as far as the directors can at that time make out the same; so as to exhibit to the stockholders a full, fair and true account of the situation of the affairs of the corporation.

Meetings, how called and conducted. § 17, ante. Meetings to be held in State. § 44, ante.

[This and the following sections are a substantial re-enactment of P. L. 1829, p. 58, entitled "An act to prevent frauds by incorporated companies." Under this act it was held that the only criterion of insolvency furnished by the act was the suspension of business, and that the act of insolvency contemplated by the statute is committed at the time the company suspends its ordinary business operations. *Bedford v. Newark Machine Works*, 16 N. J. Eq. R. 117.]

No corporate property to be sold or conveyed in case of insolvency.

§ 64. Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, neither the directors nor any officer or agent of the corporation shall sell, convey, assign or transfer any of its estate, effects, choses in action, goods, chattels, rights or credits, lands or tenements; nor shall they or either of them make any such sale, conveyance, assignment or transfer in contemplation of insolvency, and every such sale, conveyance, assignment or transfer shall be utterly null and void as against creditors; Provided, That a bona fide purchase for a valuable consideration, before the corporation shall have actually suspended its ordinary business, by any person without notice of such insolvency or of the sale being made in contemplation of insolvency, shall not be invalidated or impeached.

[In absence of statutory prohibition, a corporation may prefer one creditor to another although it is insolvent. *Wilkinson v. Bauerle*, 41 N. J. Eq. R. 635; s. c., 7 Atl. Rep. 514. But corporate property cannot be diverted from payment of debt. *Id.* An insolvent corporation may prefer one creditor over another, but it must exercise its right in that regard in a lawful manner. *Bissell v. Besson*, 47 N. J. Eq. R. 580; s. c., 22 Atl. Rep. 1077. See also *Vail v. Jameson*, 41 N. J. Eq. R. 648; 7 Atl. Rep. 520. Directors may execute to themselves mortgages to secure any actual or contingent liability of the corporation to them, even though this be done in contemplation of immediate application for a receiver, and the lien secured thereby will be valid and prior to those of general creditors. *Whitaker v. Bank*, 52 N. J. Eq. R. 400; s. c., 29 Atl. Rep. 203.

All of these cases were decided prior to the enactment of the above section and after the repeal of a similar provision contained in the Insolvency Act of 1829, by the act of 1875. Since the revision of 1896 it is unlawful for an insolvent corporation to prefer any of its creditors.

Under the provision as contained in the act of 1829 it was held that its object was to prevent companies actually insolvent, or whose embarrassments were such as must inevitably lead to insolvency, from doing what it is lawful for an individual debtor to do,—make a preference in favor of any one or more of its creditors. *Holcomb's Executors v. New Hope Del. Bridge Co.*, 9 N. J. Eq. R. 437; *Van Wagnen v. Savings Bank*, 10 id. 13; *State Bank v. Receiver*, 3 id. 266; *Receiver v. Paterson Gas Co.*, 23 N. J. L. R. 291; *Kinsela v. Cataract Bank*, 18 N. J. Eq. R. 158; *Wells v. Rahway White Rubber Co.*, 19 id. 402.

A board of directors of an insolvent corporation cannot by mortgage upon the corporate property prefer one of its members. *Montgomery v. Phillips*, 53 N. J. Eq. R. 203; s. c., 31 Atl. Rep. 622; followed in *Mallory v. Kirkpatrick*, 54 N. J. Eq. R. 50; s. c., 33 Atl. Rep. 205. And see *Savage v. Miller*, 39 Atl. Rep. 665.]

Proceedings in chancery against insolvent corporations; may issue injunction.

§ 65. Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, any creditor or stockholder may by petition or bill of complaint setting forth the facts and circumstances of the case, apply to the court of chancery for a writ of injunction and the appointment of a receiver or receivers or trustees, and the court being satisfied by affidavit or otherwise of the sufficiency of said application, and of the truth of the allegations contained in the petition or bill, and upon such notice, if any, as the court by order may direct, may proceed in a summary way to hear the affidavits, proofs and allegations which may be offered on behalf of the parties, and if upon such inquiry it shall appear to the court that the corporation has become insolvent and is not about to resume its business in a short time thereafter with safety to the public and advantage to the stockholders, it may issue an injunction to restrain the corporation and its officers and agents from exercising any of its privileges or franchises and from collecting or receiving any debts, or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to a receiver appointed by the court, until the court shall otherwise order.

#### Power to act discretionary.

[The powers conferred upon the Court of Chancery by this section are extraordinary powers, and are to be exercised with caution, and only when the circumstances of the case and the ends of justice require it. *Rawnsley v. Trenton Mutual Life Ins. Co.*, 9 N. J. Eq. R. 95.

The act places it in the power of the court, upon the fact of insolvency being shown, to appoint or refuse to appoint a receiver as the ends of justice, having due regard to the safety of the public and the best interests of the creditors and stockholders, shall seem to require. *Atlantic Trust Co. v. Electric Storage Co.*, 49 N. J. Eq. 402; s. c., 23 Atl. Rep. 934. The court must be satisfied that the corporation is not only insolvent, but that it is not about to resume its business with safety to the public and advantage to the stockholders, before it can issue an injunction or appoint a receiver. *Cook v. East Trenton Pottery Co.*, 53 N. J. Eq. R. 29; s. c., 30 Atl. Rep. 534.

#### Insolvency must be established.

The bill or petition must set forth the facts and circumstances of the case. Affidavits and proofs may be read, but for no purpose except to sustain the case made by the bill and by the opposite party in its disproof and denial. It is not sufficient to charge that the company is insolvent and then take affidavits to show facts and circumstances not alluded to in the bill, to make out such insolvency. *Rawnsley v. Trenton Mut. Life Ins. Co.*, 9 N. J. Eq. R. 95.

## Appointment and powers of receiver — Act of 1896, § 66.

The primary question in each case is, whether the corporation be insolvent or not. *Brundred v. Paterson Machine Co.*, 4 N. J. Eq. R. 294; *Parsons v. Monroe Mfg. Co.*, id. 187; *Cammack v. Johnson*, 2 id. 173.

In judging of the insolvency of a company, its property should be estimated at its fair value, and not at the depreciated price which it might command at a forced sale. *Parsons v. Monroe Mfg. Co.*, 4 N. J. Eq. R. 187. The most unfavorable inference as to the condition of a corporation may justly be drawn from the circumstances of the company's withholding its books upon an investigation touching its insolvency. Id.

The act of insolvency contemplated by the statute is committed at the time the company suspends its ordinary business operations. *Bedford v. Newark Machine Co.*, 16 N. J. Eq. R. (1 C. E. Greene) 117.

Nothing short of present actual insolvency will warrant the appointment of a receiver to wind up a corporation. Expected insolvency at some time in the future is not sufficient. *Edison v. Edison United Phonograph Co.*, 52 N. J. Eq. R. 620; s. c., 29 Atl. Rep. 195.

The statute makes insolvency the jurisdictional fact. The court can do nothing, neither issue an injunction nor appoint a receiver, until insolvency is first established. The proof in support of a jurisdictional fact must be clear and convincing. *Atlantic Trust Co. v. Consolidated Electric Co.*, 49 N. J. Eq. R. 402; s. c., 23 Atl. Rep. 934.

It is not sufficient to merely allege in a bill that the company is insolvent and has suspended its business for want of funds to carry on the same. The facts and circumstances must be set out in the bill from which the insolvency of the company shall appear. *Newfoundland R. R. Const. Co. v. Schack*, 40 N. J. Eq. R. 222; s. c., 1 Atl. Rep. 23.

The appointment of receivers is not a matter of course following a decree of the court declaring the company insolvent. But as a general rule receivers will be appointed. The management of the affairs of the corporation will not be left in the hands of the directors unless it be shown to be for the best interests of creditors and stockholders. *Nichols v. Perry Patent Arm Co.*, 11 N. J. Eq. R. 126.

#### Proceedings generally; receiver.

The proceeding is in rem and is of a summary character; a receiver may be appointed with or without notice, and the corporation cannot, on motion, raise the question whether the court can acquire jurisdiction by publication of notice, to make a decree of insolvency. *Albert v. Clarendon, etc., Co.*, 53 N. J. Eq. R. 623; s. c., 23 Atl. Rep. 8.

A corporation which has been declared insolvent has power to take steps looking toward a reorganization and a resumption of its property and business pending an injunction and receivership, and may employ agents to aid in the carrying out of its purposes, for whose compensation it will be liable if the injunction is dissolved and the receiver removed. *Linn v. Joseph Dixon Crucible Co.*, 59 N. J. L. R. 28; s. c., 35 Atl. Rep. 2.

Putting the corporation in charge of a receiver does not work its dissolution. The corporation continues to exist until its dissolution is effected either by surrender or judicial decision. Meanwhile the corporation exists with all its franchises, exercisable by the receiver in the management and control of its affairs, subject to all the duties, obligations and liabilities that rested upon the corporation itself, among which is liability to taxation, the same as the corporation itself would have been subject to in case the management and control of its affairs had not been committed to a receiver. *Kirkpatrick v. Assessors*, 59 N. J. L. R. 53; *N. J. So. R. R. Co. v. R. R. Commrs.*, 41 id. 235.

By the adjudication of insolvency and the appointment of a receiver, the debts of creditors at large are fastened upon the property of the corporation. *Graham Button Co. v. Sperllner*, 50 N. J. Eq. R. 120; s. c., 24 Atl. Rep. 571.]

#### May appoint receiver; powers of receiver.

§ 66. The court of chancery, at the time of ordering said injunction, or at any time afterwards may appoint a receiver or receivers or trustees for the creditors and stockholders of the corporation, with full power and authority to demand, sue for, collect, receive and take into their possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes and property of every description of the corporation, and to institute suits at law or in equity for the recovery of any estate, property, damages or demands existing in favor of the corporation, and in his or their discretion to compound and settle with any debtor or creditor of the corporation, or with persons having possession of its property or in any way responsible at law or in equity to the corporation at the time of its insolvency or suspension of business, or afterwards, upon such terms and in such manner as he or they shall deem just and beneficial to the corporation, and in case of mutual dealings between the corporation and any person to allow just set-offs in favor of such person in all cases in which the same ought to be allowed according to law and equity; a debtor who shall have in good faith paid his debt to the corporation without notice of its insolvency or suspension of business, shall not be liable therefor, and the receiver or receivers or trustees shall have power to sell, convey and assign all the said estate, rights and interests, and shall hold and dispose of the proceeds thereof under the directions of the court of chancery; the word receiver as used in this act shall be construed to include receivers and trustees appointed as provided in this act.

Bond and oath of receiver. § 67, post. See following sections as to further powers and duties. Allowances for services and expenses. § 85, post. Distribution of assets. § 68, post.



[The property of the company does not vest in the receivers, nor does their appointment necessarily end the corporation; they have sole power over the corporation; they are substituted in place of the directors and managers, but for the purpose of settling up and closing its affairs. The title of the property is not changed but a power only is delegated to the receivers who take charge of and sell it. They may sue or defend suits in their own name or in name of the corporation. *Willink v. Morris, etc., Co.*, 4 N. J. Eq. R. 400. This decision is upheld in *Receiver v. Bank*, 34 N. J. Eq. R. 450, and in *Kirkpatrick v. Corning*, 37 id. 54.

The appointment of receivers under the statute is a conveyance or transfer of all property of the insolvent corporation to them, for the benefit of creditors of the company, to be distributed as pointed out by the statute. *Corrigan v. Trenton, etc., Co.*, 7 N. J. Eq. R. 496. On the appointment of a receiver of an insolvent corporation, its title to its property is divested by force of law. *Freeholders v. Bank*, 29 N. J. Eq. R. 268; *aff'd*, 30 id. 311. Held, in case at bar, that receiver might bring a suit in equity to nullify the mortgage. *Trust Co. v. Miller*, 33 N. J. Eq. R. 160. The appointment of a receiver under the statute operates as a transfer. *Minchin v. Bank*, 36 N. J. Eq. R. 442. The power of the court, in insolvency, over foreign corporations is mainly over their property or assets in this State. *Id.* Though statute authorizing appointment of receiver may give him no express authority to sue in his own name, he may nevertheless do so. *Wilkinson v. Rutherford*, 49 N. J. L. R. 241; s. c., 8 Atl. Rep. 507.

The receiver is a trustee for creditors and stockholders, with full power to institute suits at law or in equity to recover assets. These provisions are declaratory of the common law. *Hood v. McNaughton*, 54 N. J. Eq. R. 426; s. c., 24 Atl. Rep. 497; *Rabe v. Dunlap*, 51 N. J. Eq. R. 40; The receiver of an insolvent corporation is the representative of its interests, and as such may, by suit or defense, avoid any instrument which is void as against them. *Receiver v. Spielmann*, 50 N. J. Eq. R. 120; s. c., 25 Atl. Rep. 959.

To authorize the Court of Chancery to appoint a receiver of an insolvent foreign corporation, it is not necessary that the corporation should be engaged in carrying on its business in the State on the very day when the petition is filed, but the court may take jurisdiction in every case where it is made to appear that the corporation has done business here, and still has property here, although, at the time when the petition was filed, its business here is entirely suspended. *Albert v. Clarendon Land, etc., Co.*, 53 N. J. Eq. R. 626; s. c., 23 Atl. Rep. 8.

#### Powers of receivers.

The receiver of an insolvent corporation is an officer created by law for the protection of the rights of the creditors of the corporation; and to accomplish the purposes of his creation he must be clothed with their attributes and equities. As the representative of the creditors he may by

suit or defense avoid any instrument which is void against them. As such representative he may sue stockholders at law for unpaid subscriptions. *National Trust Co. v. Miller*, 33 N. J. Eq. R. 155, 158; *Hood v. McNaughton*, 54 N. J. L. R. 425; s. c., 24 Atl. Rep. 497; *Barkalow v. Totten*, 53 N. J. Eq. R. 573.

A receiver derives his power from the statute. It is not necessary that the power should be expressly conferred. It is sufficient if it can be fairly implied. *Runyon v. Farmers' Bank*, 4 N. J. Eq. R. (3 Gr. Ch.) 480.

Receivers may compel disclosures of the knowledge possessed by any person as to the affairs of the company. *Smith v. Trenton Del. Falls Co.*, 4 N. J. Eq. R. 505.

They may determine priorities of claims. *Id.*

They may ratify a sale made by the company after insolvency, although such sale is declared void by the act. *Suydam v. Receivers*, 3 N. J. Eq. R. 114. They have discretion in disposing of the property, for the due exercise of which they are responsible to the court. *Knot v. Receivers*, 4 N. J. Eq. R. 423; *Potts v. N. J. Arms Co.*, 17 id. 395.

A receiver has power to adjust by agreement the rights of claimants under the Mechanics' Lien Law, although no steps beyond filing their claims have been taken. *De Mott v. Stockton Paper Mfg. Co.*, 32 N. J. Eq. R. 124.

The receiver may object that a judgment against the corporation obtained by confession is not binding. *Stokes v. N. J. Pottery Co.*, 46 N. J. L. R. 237.

He cannot successfully assail a mortgage given by the corporation because it was executed for an antecedent debt. *Kuser v. Wright*, 52 N. J. Eq. R. 825; s. c., 31 Atl. Rep. 397.

A receiver appointed by the courts of this State to administer the assets of a corporation cannot transfer to a foreign jurisdiction any question touching the distribution of such assets. He cannot deprive the court which appointed him of its authority over him and over the fund which he holds as its officer. *Reynolds v. Stockton*, 43 N. J. Eq. R. 211.

Contracts made by a receiver, by virtue of his discretionary authority, are, in some respects, *sui generis*; they bind the receiver, not personally, but as representatives of the trust, and are to be enforced, or redress for their breach is to be accorded out of the fund; but he who contracts with the receiver does so with the knowledge that, for any injury received thereby, he can only get redress by obtaining the permission of the court, whose officer the receiver is, to sue at law, or to proceed against him in the Court of Chancery, and in either case, by satisfying that court that the claim is well founded. *Vanderbilt v. Central R. R. Co.*, 43 N. J. Eq. R. 669.]

#### Bond and oath of receiver.

§ 67. Every receiver shall before acting enter into such bond and comply with such terms as the court may prescribe, and take and subscribe the following oath or affirmation: "I, —, do swear (or affirm) that I will faithfully, honestly and impartially

execute the powers and trusts reposed in me as receiver, for the creditors and stockholders of the —, and that without favor or affection," which oath or affirmation shall be filed in the office of the clerk in chancery within ten days after the taking thereof.

[Where, under this section, the chancellor requires the receiver to execute a bond, the surety of the receiver shall be concluded, in a suit at law on the bond, by the amount found due on an account taken in chancery, he having, by due notice, had an opportunity to intervene in the taking of such account. *Ball v. Chancellor*, 46 N. J. L. R. 133.]

#### All property shall vest in receiver.

§ 68. All the real and personal property of an insolvent corporation, wheresoever situated, and all its franchises, rights, privileges and effects shall, upon the appointment of a receiver, forthwith vest in him, and the corporation shall be divested of the title thereto.

[This section was inserted in the act of 1896, to settle the question as to whether the property of an insolvent company vests in the receiver. *Dill on N. J. Corporations*, p. 85. In *Willink v. Morris Canal & Banking Co.*, 4 N. J. Eq. R. 377, the title to the property of a corporation was held not to be changed by the appointment of a receiver, and that a power only is vested in him to take charge of and sell it. This case was followed in *Receiver v. First Nat. Bank*, 34 N. J. Eq. R. 450, 456, and *Kirkpatrick v. Corning*, 37 id. 54, 59.

But in *Corrigan v. Trenton Del. Falls Co.* it was held that the statute and the appointment of receivers under it, act as a conveyance or transfer of all the property of the insolvent company to the receivers for the benefit of the creditors of the company, to be distributed in the mode pointed out by the statute. This case was followed in *Freeholders of Middlesex v. State Bank*, 29 N. J. Eq. R. 268, 274, and *Minchin v. Second Nat. Bank*, 36 id. 268, 274.]

#### When debts have been provided for, court may direct receiver to reconvey property; court may decree dissolution.

§ 69. Whenever a receiver shall have been appointed as aforesaid and it shall afterwards appear that the debts of the corporation have been paid or provided for, and that there remains or can be obtained by further contributions sufficient capital to enable it to resume its business, the court of chancery may, in its discretion, a proper case being shown, direct the receiver to reconvey to the corporation all its property, franchises, rights and effects, and thereafter the corporation may resume control of and enjoy the same as fully as if the receiver had never been appointed; and in every case in which the court of chancery shall not direct such reconveyance, said court may, in its discre-

tion, make a decree dissolving the corporation and declaring its charter forfeited and void.

Reorganization of corporations, see Act of April 16, 1897 (P. L. 229), post.

[Pending an injunction and the appointment of a receiver, the corporation may take steps toward reorganization and the resumption of business, and may employ agents and incur liabilities to that end. *Linn v. Jas. Dixon Crucible Co.*, 25 Atl. Rep. 2.]

#### Reorganized company may issue bonds and stock.

§ 70. Wherever a majority in interest of the stockholders of such corporation shall have agreed upon a plan for the reorganization of the corporation and a resumption by it of the management and control of its property and business, such corporation may, with the consent of the court of chancery, upon the reconveyance to it of its property and franchises, mortgage the same for such amount as may be necessary for the purposes of such reorganization; and may issue bonds or other evidences of indebtedness, or additional stock, or both, and use the same for the full or partial payment of the creditors who will accept the same, or otherwise dispose of the same for the purposes of the reorganization.

#### Power of receiver to send for papers and examine witnesses.

§ 71. Such receiver shall have power to send for persons and papers and to examine any persons, including the creditors and claimants, and the president, directors and other officers and agents of the corporation, on oath or affirmation (which oath or affirmation the receiver may administer), respecting its affairs and transactions and its estate, money, goods, chattels, credits, notes, bills and choses in action, real and personal estate and effects of every kind, and also respecting its debts, obligations, contracts and liabilities, and the claims against it; and if any person shall refuse to be sworn or affirmed, or to make answers to such questions as shall be put to him, or refuse to declare the whole truth touching the subject-matter of the said examination, the court of chancery may, on report by the receiver, commit such person to prison, there to remain until he shall submit himself to be examined, and pay all the costs of the proceedings against him.

#### Receiver may search, etc.

§ 72. Such receiver, with the assistance of a peace officer, may break open, in the daytime, the houses, shops, warehouses, doors, trunks, chests, or other places of the corporation where any of its goods, chattels, choses

Claims presented; trial by jury — Act of 1896, §§ 73-78.

in action, notes, bills, moneys, books, papers or other writings or effects, have been usually kept, or shall be, and take possession of the same, and of the lands and tenements belonging to the corporation.

**Majority of receivers or trustees may act; court may remove and appoint others.**

§ 73. Every matter and thing by this act required to be done by receivers or trustees shall be good and effectual, to all intents and purposes, if performed by a majority of them; and the court of chancery may remove any receiver or trustee, and appoint another or others in his place or fill any vacancy which may occur.

[The court may put an end to the functions of a receiver whenever it deems it expedient to do so, but like all other judicial actions resting on discretion, its exercise should always be grounded in some consideration of justice or convenience. It should never be exercised capriciously nor arbitrarily, but only for cause. *McCullough v. Merchants' Loan & Trust Co.*, 29 N. J. Eq. R. 218.]

**Receiver to furnish court full inventory.**

§ 74. Such receiver, as soon as convenient, shall lay before the court of chancery a full and complete inventory of all the estate, property and effects of the corporation, its nature and probable value, and an account of all debts due from and to it, as nearly as the same can be ascertained, and make a report to the court of his proceedings every six months thereafter during the continuance of the trust.

**Time for creditor to prove claims may be limited.**

§ 75. The court of chancery may limit the time within which creditors shall present and make proof to such receiver of their respective claims against the corporation, and may bar all creditors and claimants failing so to do within the time limited from participating in the distribution of the assets of the corporation; the court may also prescribe what notice, by publication or otherwise, shall be given to creditors of such limitation of time.

**Claims to be upon oath, and receiver may examine on oath.**

§ 76. Every claim against an insolvent corporation shall be presented to the receiver in writing and upon oath; and the claimant, if required, shall submit himself to such examination in relation to the claim as the receiver shall direct, and shall produce such books and papers relating to the claim as shall be required; and the receiver shall have power to examine, under oath or affirmation, all witnesses produced before him touching the claims, and shall pass upon and allow or disallow the claims, or any part thereof, and notify the claimants of his determination.

**Trial by jury at the circuit.**

§ 77. Any creditor or claimant who shall lay his claim before such receiver may, at the same time, demand that a jury shall decide thereon, and in like manner the receiver may demand that the same shall be referred to a jury; and in either case such demand shall be entered on the minutes of the receiver, and thereupon an issue shall be made up between the parties, under the direction of one of the justices of the supreme court, and a jury impaneled, as in other cases, to try the same in the circuit court of the county in which the corporation carried on its business or had its principal office; the verdict of the jury shall be subject to the control of the supreme court, as in suits originally instituted therein, and when rendered, if not set aside by the court, shall be certified by the clerk of the supreme court to the receiver; the creditor shall be considered, in all respects, as having proved his debt or claim for the amount so ascertained to be due, and in all cases in which no trial by jury shall be demanded the court of chancery shall have jurisdiction to pass upon the claims presented and to determine the rights of the claimants, and to make such order or decree touching the same as shall be equitable and just.

[The chancellor may ask the aid of a jury under the general powers of the court. But in such case the effect of the verdict would be different from that of a jury under this section. A verdict under this section is conclusive unless set aside by the Supreme Court. If ordered by the chancellor under the general powers of his court, it would be to inform his conscience, and he would not be bound to respect it, unless his judgment approved it. *Holcomb v. New Hope Bridge Co.*, 9 N. J. Eq. R. 457.]

**Appeals by persons aggrieved.**

§ 78. Every such insolvent corporation, or any person aggrieved by the proceedings or determination of such receiver in the discharge of his duty, may appeal to the court of chancery, which court shall, in a summary way, hear and determine the matter complained of, and make such order touching the same as shall be equitable and just.

[The language of the above section is very comprehensive, and would seem to have been adopted for the purpose of embracing every question which could possibly be brought before the receivers for their action. *Jackson v. Receivers*, 9 N. J. Eq. R. 205. The right to appeal is not confined to the creditor who has a naked claim against the company, but extends to question where a set-off is involved. *Id.* A delay for eight years in appealing from a receiver's distribution of a claim, notwithstanding repeated notices of an order limiting appeals, is a bar to any relief. *Leo v. Green*, 52 N. J. Eq. R. 1; s. c., 28 Atl. Rep. 904.

While there is the same receiver for two corporations, one of which, as part of its assets, owns



## Sale by receiver; laborers' lien — Act of 1896, §§ 79-83.

stock in the other, a creditor of one may appeal from an allowance of a claim against the other. *Blake v. Domestic Mfg. Co.*, 38 Atl. Rep. 241.]

#### Receiver may be substituted as party to suits.

§ 79. Such receiver shall, upon application by him, be substituted as party plaintiff or complainant in the place and stead of the corporation in any suit or proceeding at law or in equity which was pending at the time of his appointment.

#### Death of receiver not to abate actions against him.

§ 80. No action against a receiver of a corporation shall abate by reason of his death, but, upon suggestion of the facts on the record, shall be continued against his successor, or against the corporation in case no new receiver be appointed.

#### Court may order receiver to sell lands, etc.

§ 81. Where property of an insolvent corporation is at the time of the appointment of a receiver incumbered with mortgages or other liens, the legality of which is brought in question, and the property is of a character materially to deteriorate in value pending the litigation, the court of chancery may order the receiver to sell the same, clear of incumbrances, at public or private sale, for the best price that can be obtained, and pay the money into the court, there to remain subject to the same liens and equities of all parties in interest as was the property before sale, to be disposed of as the court shall direct.

[Above section is remedial in its nature, and must be so construed. *Randolf v. Larned*, 27 N. J. Eq. R. 557.

The object of the legislature was the prevention of loss by the depreciation in value of the property pending protracted litigation. It was not intended to confine the remedy to mischief arising from litigation of any particular character, but to all litigations between incumbrancers, respecting the validity, extent or priority of their liens. *Id.*

Under this section the receiver should be vested with large discretionary power as to the mode of sale. *Potts v. Ordnance Co.*, 17 N. J. Eq. R. 395; *Middletown & West Line R. R. Co.*, 25 Id. 306.]

#### Receiver may sell or lease principal work, rights, franchises, etc.

§ 82. Whenever a receiver of a corporation shall have charge of a canal, railroad, turnpike or other work of a public nature, in which the value of the work is dependent upon the franchise, and in the continuance of which the public as well as the stockholders and creditors have an interest, the

receiver may sell or lease the principal work for the construction whereof the said corporation was organized, together with all the chartered rights, privileges and franchises belonging to it and appertaining to such principal work; and the purchaser or purchasers, lessee or lessees of such principal work, chartered rights, privileges and franchises, shall thereafter hold, use and enjoy the same during the whole of the residue of the term limited in the charter of said corporation, or during the term in such lease specified, in as full and ample a manner as such corporations could or might have used and enjoyed the same; subject, however, to all the restrictions, limitations and conditions contained in such charter; Provided, That nothing in this section contained shall be so construed as to apply to or in anywise affect any corporation authorized by law to exercise banking privileges.

#### Laborers and workmen shall have first lien on assets.

§ 83. In case of the insolvency of any corporation the laborers and workmen, and all persons doing labor or service of whatever character, in the regular employ of such corporation, shall have a first and prior lien upon the assets thereof for the amount of wages due to them respectively for all labor, work and services done, performed or rendered within two months next preceding the date when proceedings in insolvency shall be actually instituted and begun against such insolvent corporation.

#### Who are entitled to lien.

[Apprentices are subject to its provisions. *Bedford v. Mach. Co.*, 16 N. J. Eq. R. 117. And so is a drayman in the regular employ of a corporation in its necessary business. *Watson v. Mfg. Co.*, 30 N. J. Eq. R. 588. The president is not entitled to a lien for services; he is a member of the corporation and cannot be both employer and employe. *England's Ex. v. Beatty Organ Co.*, 41 N. J. Eq. R. 470. A bookkeeper in the regular employ of a corporation, although a director, is entitled to the lien. *Consolidated Coal Co. v. Keystone Chemical Co.*, 54 N. J. Eq. R. 309; *s. c.*, 35 Atl. Rep. 157. The right conferred by it is personal, and inhering alone in the person who actually performs labor or services. *Lehigh, etc., Co. v. R. R. Co.*, 29 Atl. Rep. 252. A person who furnishes the labor or services of others, under a contract to do the whole business of the corporation, or a particular branch of it, is not an employe, but a contractor. *Id.*]

#### Effect and construction.

[The preference given by above section is in derogation of the right of creditors to be paid equally and must not be extended by construction. *Lehigh, etc., Coal Co. v. R. R. Co.*, 29 N. J. Eq. R. 252. It cannot be so extended as to impair the obligation of contracts or lien of duly recorded

incumbrances antecedent to its enactment. *Coe v. Ry. Co.*, 31 N. J. Eq. R. 107. At the time when the lien given comes into existence the court adjudges the insolvency occurred. *R. R. Co. v. Iron Co.*, 33 N. J. Eq. R. 193. But does not include interest which has accrued thereon before the lien attaches. *Id.* Laborers have the lien, no matter how long before the date of insolvency the wages may have accrued. *Id.* Persons holding claims for wages, who are not in the employ of a corporation when it becomes insolvent, are not within the policy of this section. *Id.* Presentation of a claim, embracing other items than charges for wages, does not work a forfeiture of the right of lien for wages, given by this section. *Id.* Neither does the proving of a claim for a sum in excess of the amount really due. *Id.* A. entered into an agreement with a corporation to serve it for a term of years at a fixed salary. The corporation became insolvent and a receiver was appointed. Held, that he is entitled to present a claim to receiver for amount of damages he suffers by the breach, but such claim is not entitled to preference under above section. *Spader v. Mfg. Co.*, 47 N. J. Eq. R. 18; s. c., 20 Atl. Rep. 378.

A superintendent of the work of constructing a railroad, supposing the company to be solvent, voluntarily advanced his own money to pay the workmen for their work. Afterward the company became solvent. In the absence of an assignment of the claims of the workmen to him or any agreement that he should have the benefit of their lien, it was held that he was not, by subrogation, entitled to the workmen's statutory liens for those payments. *North River Construction Co.'s Case*, 38 N. J. Eq. R. 433.

The word "assets" includes the entire assets or property of the corporation which came to the receiver for administration, whether incumbered by previous liens or not, with the exception of those set forth in the following sections. *Fitzgerald v. Marion Powder Co.*, 35 Atl. Rep. 1064.]

#### Such liens prior to all liens except chattel mortgages and mortgages on real property.

§ 84. Such lien shall be prior to all other liens that can or may be acquired upon or against such assets, except the lien and incumbrance of a chattel mortgage, recorded more than two months next preceding the date when proceedings in insolvency shall have been actually instituted against such insolvent corporation, and except the lien and incumbrance of a chattel mortgage recorded within two months next preceding the date when proceedings in insolvency shall have been actually instituted against such insolvent corporation, for money loaned or for goods purchased within said period of two months; and also except as against the lien of mortgages given upon the lands and real estate of such insolvent corporation.

[The lien of laborers is prior to the lien of a judgment entered before the insolvency of the

company. *Fitzgerald v. Maxim Powder Mfg. Co.*, 35 Atl. Rep. 1064.]

#### Compensation of receivers.

§ 85. Before distribution of the assets of an insolvent corporation among the creditors or stockholders the court of chancery shall allow a reasonable compensation to the receiver for his services and the costs and expenses of the administration of his trust, and the costs of the proceedings in said court, to be first paid out of said assets.

#### Distribution; how made.

§ 86. After payment of all allowances, expenses and costs, and the satisfaction of all special and general liens upon the funds of the corporation to the extent of their lawful priority, the creditors shall be paid proportionally to the amount of their respective debts, excepting mortgage and judgment creditors when the judgment has not been by confession for the purpose of preferring creditors; and the creditors shall be entitled to distribution on debts not due, making in such case a rebate of interest, when interest is not accruing on the same; and the surplus funds, if any, after payment of the creditors and the costs, expenses and allowances aforesaid, and the preferred stockholders, shall be divided and paid to the general stockholders proportionally, according to their respective shares.

Franchise tax a preferred debt. Act of April 18, 1884, post. Liens of laborers first paid. §§ 83, 84, ante. Liens of certain chattel mortgages and mortgages on real property. § 84, ante.

[This State does not possess the crown's common-law prerogative to have its debts paid in preference to other creditors. *Freeholders v. Bank*, 29 N. J. Eq. R. 268; s. c., 30 id. 311; *Evans v. Walsh*, 41 N. J. L. R. 281. Under above section judgment creditors of insolvent corporations will be preferred only so far as they have acquired liens. *Doane v. Ins. Co.*, 45 N. J. L. R. 274; s. c., 17 Atl. Rep. 625. By an adjudication of insolvency and the appointment of a receiver, the debts of creditors at large of an insolvent corporation are fastened on its property. *Receiver v. Spielmann*, 50 N. J. L. R. 120; s. c., 24 Atl. Rep. 571.

A judgment which was not entered until after the appointment of a receiver or the allowance of the injunction is not entitled to preference. *Kelly v. Neshanie Co.*, 7 N. J. Eq. R. 579; *Stratton v. Allen*, 16 id. 229.

The day on which the insolvency occurred, as adjudged by the decree, fixes the time to which the several claims must be referred for adjustment, and not the date of the decree itself. *Mayer v. Atty.-Genl.*, 32 N. J. Eq. R. 815. In the distribution of the capital the holders of preferred stock are to be first paid. *McGregor v. Home Ins. Co.*, 33 N. J. Eq. R. 187.

A judgment creditor whose judgment has been confessed for the purpose of preferring him is not entitled to preference. *Vall v. Jameson*, 41 N. J. Eq. R. 650; s. c., 7 Atl. Rep. 520.]

Service of process — Act of 1896, §§ 87, 87a. 88.

### VIII. Service of Process.

#### Service of process upon corporations; how made.

§ 87. In any personal action commenced against a corporation in any of the courts of law of this State, the first process to be made use of may be a summons, a copy whereof shall be served on the president, or other head officer or agent in charge of its principal office in this State, or left at his dwelling-house or usual place of abode, at least six days before its return; and in case the president or other head officer or agent cannot be found to be served with process, and has no dwelling-house, or usual place of abode within this State, a copy of the summons shall be served on the clerk or secretary of the corporation, if any there be, and if no clerk or secretary, then on one of its directors, or left at his dwelling-house, or usual place of abode, six days before its return.

Process, how served on foreign corporations. §§ 88, 89, 90, 102, post. Agent of foreign corporation. § 98, post.

[Sections 87 and 88 (of the Act of 1875, from which this section was derived) relate only to personal actions, where the fruits of the litigation are secured by a common-law judgment; they do not apply to prerogative writs, which are enforceable only by attachments for contempt. *State v. R. R. Co.*, 41 N. J. L. R. 251. Section 87 refers only to process in the higher courts, and not when issued by a justice of the peace. *R. R. Co. v. Ditton*, 36 N. J. L. R. 361. Service on any officer or agent of the company whose duty it is to communicate the fact of such service to the governing body of the corporation, is good. *Dock v. Manf. Co.*, 34 N. J. L. R. 312; *Wheeler & Wilson Mfg. Co. v. Carty*, 53 id. 336; s. c., 21 Atl. Rep. 851. Service on a bookkeeper is not good. *Id.* Nor is service upon the company's foreman. *Flax & Hemp Co. v. Ballentine*, 1 Harrison, 454. Summons should be served according to above section in landlord and tenancy cases, where tenant is a corporation. *State v. Felton*, 52 N. J. L. R. 161; s. c., 19 Atl. Rep. 123.

Everything must depend upon the circumstances of each particular case, having regard to the purposes for which the corporation was created, and the nature of the duties of the person on whom service is made, either in his official capacity or by the usages of the company. The principle is that it must be made upon some person upon whom the duty devolves by virtue of his official position, or of his employment, to communicate the fact of service to the governing power in the corporation. A service on such a person is a service on the corporation. *Dock v. Mfg. Co.*, 34 N. J. L. R. 312, 318; *Facts Pub. Co. v. Felton*, 52 id. 161; s. c., 19 Atl. Rep. 123. But see *Norton v. Berlin Iron Bridge Co.*, 51 N. J. L. R. 442; s. c., 17 Atl. Rep. 1079. An affidavit of service which states that the copy was served "on A. B., said

to be one of the directors," is insufficient. *Den v. Bridgewater Co.*, 10 N. J. L. R. 237.

Where, after the reorganization of an old company under the former name and the election of the same person as president, a service of a summons on him for a debt of the old company is correct, but it must be shown in what capacity he is served. *Central R. R. Co. v. Bunn*, 11 N. J. Eq. R. 336.]

#### Service of summons on corporation.

§ 87a. That the service of a copy of the declaration in the last preceding section mentioned may be made by delivering the same to the defendant personally, or by leaving it at his dwelling-house or last place of abode; and where the defendant is a corporation, service may be made by delivering the same to the president or other head officer, or to the secretary or clerk thereof, personally, or by leaving the same at his dwelling-house or place of abode; and the plaintiff, if he shall be entitled to costs in the cause, shall be allowed for such service the sum of two dollars for each defendant so served, not exceeding three, and the same to be included in the taxed bill of costs.

An act to regulate the practice of courts of law. (Revision of 1874), § 106. See Gen. Statutes, p. 2551.

#### Upon foreign corporation.

§ 88. In all personal suits or actions hereafter brought in any court of this State, against any foreign corporation, process may be served upon any officer, director, agent, clerk or engineer of such corporation, either personally or by leaving a copy thereof at his dwelling-house or usual place of abode, or by leaving a copy at the office, depot or usual place of business of such foreign corporation.

Designation of agent by foreign corporation. § 98, post. Service of prerogative writs upon foreign corporation. § 102, post.

[The person to whom a foreign corporation commits the management and control of its business here becomes its agent for receiving service of process in all actions arising in this State out of the conduct of the business. *Norton v. Bridge Co.*, 51 N. J. L. R. 442. In an action against a New York newspaper corporation, service of summons in this State upon a person who merely receives advertisements for it, to be forwarded to its home office, and collects bills therefor, is not a good service within meaning of above section. *Mulhearn v. Press Pub. Co.*, 53 N. J. L. R. 150; s. c., 20 Atl. Rep. 760. Vice-president of a foreign corporation, who comes into this State to give testimony, is privileged from service of summons. *Mulhearn v. Press Pub. Co.*, 53 N. J. L. R. 153. A justice's court has no jurisdiction over a foreign corporation. *Mfg. Co. v. Carty*, 53 N. J. L. R. 336; s. c., 21 Atl. Rep. 851.



But by a subsequent statute the rule was changed and the court now has such jurisdiction. P. L. 1892, p. 182. An officer of a foreign corporation casually within the State on business of his own, where the corporation has never transacted any business within the State, is not a proper person to serve with process. *Moulin v. Ins. Co.*, 25 N. J. L. R. 57; *Freeholders of Mercer v. Penn. R. R. Co.*, 42 id. 490. But when it sends officers and agents to this State and establishes a business here, it is liable to be brought into the courts by service of process upon such officers. *Id.*; s. c., 25 N. J. L. R. 57; *Milk Co. v. Brandenburg*, 40 id. 111.

This section applies only to process issued out of the upper courts, and not to justices' courts. The eighteenth section of the Small Cause Act, which specifically provides for the mode of serving process on corporations, was not altered by the passage of the above section. *Penn. R. R. Co. v. Kreitzman*, 57 N. J. L. R. 60; s. c., 29 Atl. Rep. 587; *Williams v. Lehigh Valley R. R. Co.*, 11 N. J. L. R. 202.

In an action against a foreign corporation, service of summons upon a person whose only connection with the defendant company was a contingent one, that had ceased before the action was commenced, is not a service on an agent of the company within the meaning of the above section. *Hass v. Security Ins. Co.*, 57 N. J. L. R. 388; s. c., 30 Atl. Rep. 430.

The word "engineer," as used in the above section, includes a "locomotive engineer" on a railroad. *Devere v. D., L. & W. R. R. Co.*, 60 Fed. Rep. 886.]

**Defendant considered as appearing when summons returned.**

§ 89. When the sheriff or other officer shall return such summons "served" or "summoned," the defendant shall be considered as appearing in court, and may be proceeded against accordingly.

[What a sheriff adds, in his return, to the statutory return "served" or "summoned," may, if incorrect, be rejected as surplusage. *Norton v. Bridge Co.*, 51 N. J. L. R. 442; s. c., 17 Atl. Rep. 1079.]

**Proceedings when return is made "not served" or "not summoned."**

§ 90. In case the sheriff or other officer shall return a summons, issued against any corporation of this State, "not served" or "not summoned," and an affidavit shall be made to the satisfaction of the court that process cannot be served upon it, the court shall make an order directing the defendant to cause its appearance to be entered to the action, on a day to be specified in the order, a copy of which order shall be inserted in one of the newspapers published in this State, for at least three weeks, once in each week, and a copy thereof shall also be posted in three public places in this State, as shall be ordered by the court, for at least three weeks, and if the defendant shall not

appear within the time limited by the order, or within such further time as the court shall limit, then, on proof of the publication and posting of the order, the court shall order the clerk to enter appearance for the defendant, and thereupon the action shall proceed as if the defendant had entered its appearance to the action.

**Corporation not to convey lands after order for publication is made.**

§ 91. No corporation against which an order for publication shall be made, as aforesaid, shall grant, bargain, sell, alien or convey any lands, tenements or real estate in this State (in case the said summons issued out of the supreme court), or in the county in which the said summons shall have been issued (in case the said summons issued out of the circuit court or the court of common pleas), of which it shall be seized or entitled to at the time of making such order, until the plaintiff in the action shall be satisfied his legal demand, or until judgment shall be entered for the defendants; and the said action shall be and remain a lien on such lands, tenements and real estate, from the time of entering the said order for publication in the minutes of the court, and the said lands, tenements and real estate shall and may be sold on execution, as if no conveyance had been made by the said corporation.

**IX. Remedies Against Officers and Stockholders.**

**Action against officers or stockholders for personal liability.**

§ 92. When the officers, directors or stockholders of any corporation shall be liable to pay the debts of the corporation, or any part thereof, any person to whom they are liable may have an action against any one or more of them; and the declaration shall state the claim against the corporation, and the ground upon which the plaintiff expects to charge the defendants personally; or the person to whom they are liable may have his remedy by bill in chancery.

Liability of directors and officers, for failure to file statement of paid-up stock. § 26, ante. Of directors for failure to publish certificate of decrease of stock. § 29, ante. Of directors for unlawful dividends. § 30, ante. Of officers for unlawful loans. § 48, ante. Of officers for false certificate. § 52, ante. Of stockholders, for unpaid stock. § 21, ante.

[Personal liability of officers and stockholders must arise only out of some statutory provision. *Bank v. Hendrickson*, 40 N. J. L. R. 52. Liability under above section exists in favor of creditors alone. *Riegel v. Rinehart*, 26 N. J. Eq. R. 219.

Nowhere in the act does the non-payment of stock subscribed for make delinquent stockholders liable for the company's debt, except as provided in section 21, ante. This section and the sections

## Actions; foreign corporations — Act of 1896, §§ 93-97.

following relate to cases where officers, directors or stockholders are made specifically liable by the provisions of the act for the payment of the debts of the company, and provide in such cases for actions by the creditor. *Wetherbee v. Baker*, 35 N. J. Eq. R. 501. Subscriptions to capital stock are a trust fund for the payment of the debts of a corporation. The trust is created for the benefit of creditors as a class. Proceedings must, therefore, be by a general creditor's bill for the benefit of all. *Id.*; *Bickley v. Schlag*, 46 N. J. Eq. R. 533; s. c., 20 Atl. Rep. 250.

Managers of a building and loan association are not personally liable for losses resulting from an honest mistake in estimating the value of stockholders' lands on which they loaned money, nor for a defect in the acknowledgment of a mortgage, which rendered it worthless. But they are liable for losses from loans made in personal security of the stockholders, in violation of a by-law limiting the amount of such loans. *Citizens' Bldg. Assn. v. Coriell*, 34 N. J. Eq. R. 833. See also *Williams v. Riley*, *id.* 398.

Directors held liable to stockholders for gross mismanagement and fraud. *Landis v. Sea Isle Hotel Co.*, 31 Atl. Rep. 755.]

#### Officers or stockholders who pay corporate debts may recover same.

§ 93. Any officer, director or stockholder who shall pay any debt of a corporation for which he is made liable by the provisions of this act, may recover the amount so paid, in an action against the corporation for money paid for its use, in which action only the property of the corporation shall be liable to be taken, and not the property of any stockholder.

[The proceeding must be by a general creditor's bill. *Bickley v. Schlag*, 46 N. J. Eq. R. 533; s. c., 20 Atl. Rep. 250. And must be prosecuted for the benefit of all creditors. *Wetherbee v. Baker*, 35 N. J. Eq. R. 507.]

#### Property of director or stockholder not to be sold before return of execution against corporation.

§ 94. No sale or other satisfaction shall be had of the property of any director or stockholder for any debt of the corporation of which he is such director or stockholder till judgment be obtained therefor against such corporation and execution thereon returned unsatisfied, but any suit brought against any director or stockholder for such debts shall stay after execution levied, or other proceedings to acquire a lien, until such return shall have been made.

### X. Foreign Corporations.

#### Foreign corporation may acquire real property.

§ 95. Any corporation created by any other State or by any foreign State, kingdom or government may acquire by devise or otherwise and hold, mortgage, lease and con-

vey real estate in this State for the purpose of prosecuting its business or objects of such real estate as it may acquire by way of mortgage or otherwise, in the payment of debts due such corporation; Provided, Such foreign State, kingdom or government, under whose laws such corporation was created, shall not be at the time of such purchase at war with the United States.

[A foreign corporation took a mortgage on lands in this State to secure a loan already made to the mortgagor on stock collateral which became depreciated; it was held that although its charter may not have authorized the taking of a mortgage in another State, as an original investment, yet the corporation might take such mortgage by way of additional security for such loan, and the mortgage, in its hands, is valid. *National Trust Co. v. Murphy*, 30 N. J. Eq. R. 408. And see *Boehme v. Rall*, 51 *id.* 541; s. c., 26 Atl. Rep. 832.

A foreign corporation upon which has been conferred by the legislature the power to purchase and hold lands in this State, does not thereby lose its foreign and acquire a domestic character. *State v. Del. & Lack. R. R. Co.*, 30 N. J. L. R. 473.]

#### Foreign corporations are subject to act.

§ 96. Foreign corporations doing business in this State shall be subject to the provisions of this act, so far as the same can be applied to foreign corporations.

Foreign corporations, how sued. § 88, ante. Publication of summons. § 90, ante.

[The legislature may grant to a foreign corporation power to exercise its franchises or independent powers in the nature of corporate franchises within the State, without making it a domestic corporation. In such case the foreign corporation will take, under legislative sanction, those rights only which are within the express terms of the grant. *Assessors v. R. R. Co.*, 49 N. J. L. R. 194; s. c., 7 Atl. Rep. 826.

Whether an aggregation of individuals, formed by law in an artificial body, is a corporation or not, is to be determined rather by the faculties and powers conferred upon the body than by the name or description given to it. Thus a joint-stock association formed under the New York statute was held to be a corporation in New Jersey, and, as such, empowered to sue and be sued, not, as is usual, however, in a corporate name, but in the name of designated officers, as prescribed by the law of its creation. *Edgeworth v. Wood*, 58 N. J. L. R. 463; s. c., 33 Atl. Rep. 940.]

#### Must file copy of charter, etc., before commencing business; secretary of State to issue certificate.

§ 97. Every foreign corporation, except banking, insurance, ferry and railroad corporations, before transacting any business in this State, shall file in the office of the secretary of State a copy of its charter or

## Foreign corporation — Act of 1896, §§ 98-102.

certificate of incorporation, attested by its president and secretary, under its corporate seal, and a statement attested in like manner of the amount of its capital stock authorized and the amount actually issued, the character of the business which it is to transact in this State, and designating its principal office in this State and an agent who shall be a domestic corporation or a natural person of full age actually resident in this State, together with his place of abode, upon which agent process against such corporation may be served, and the agency so constituted shall continue until the substitution, by writing, of another agent; upon the filing of such copy and statement the secretary of State shall issue to such corporation a certificate that it is authorized to transact business in this State, and that the business is such as may be lawfully transacted by corporations of this State, and he shall keep a record of all such certificates issued.

Name of corporation to be posted over principal office. § 45, ante. Certificate must give address of New Jersey office. § 43a, ante.

**Until such certificate obtained, cannot maintain actions.**

§ 98. Until such corporation so transacting business in this State shall have obtained said certificate of the secretary of State, it shall not maintain any action in this State, upon any contract made by it in this State; Provided, That nothing herein shall prevent the enforcement of any contract made prior to the fourteenth day of March, one thousand eight hundred and ninety-five.

[Foreign corporations without complying with this act may maintain suits on contracts made in this State before its passage, or made out of the State at any time. *Faxon Co. v. Lovett Co.*, 36 Atl. Rep. 692.]

**To appoint another agent in case of death; penalty for failure.**

§ 99. If said agent shall die, remove from the State or become disqualified, such corporation shall forthwith file in the office of the secretary of State a written appointment of another agent, attested in the manner above provided, and in case of the omission to do so within thirty days after such death, removal or disqualification, then the secretary of State, upon being satisfied that such omission has continued for thirty days, shall, by entry on the record thereof, revoke the certificate of authority to transact business within this State, and process against such corporation in actions upon any liability incurred within this State before the designation of another agent may, after such revocation, be served upon the secretary of State; at the time of such service the plaintiff shall pay to the secretary of State for the use of the State two dollars,

to be included in the taxable costs of such plaintiff, and the secretary of State shall forthwith mail a copy of such process to such corporation at its general office or to the address of some officer thereof, if known to him.

Designation of agent. § 97, ante. Service of process upon foreign corporation. § 88, ante.

**Penalty for transacting business before complying with conditions.**

§ 100. Every foreign corporation transacting any business in any manner whatsoever, directly or indirectly, in this State without having first obtained authority therefor, as hereinabove provided, shall for each offense forfeit to the State the sum of two hundred dollars, to be recovered with costs in an action prosecuted by the attorney-general in the name of the State.

**Foreign corporations to pay same fees, etc., imposed upon corporations of this State by laws of other States.**

§ 101. When, by the laws of any other State or nation, any other or greater taxes, fines, penalties, licenses, fees or other obligations or requirements are imposed upon corporations of this State, doing business in such other State or nation, or upon their agents therein, than the laws of this State impose upon their corporations or agents doing business in this State, so long as such laws continue in force in such foreign State or nation, the same taxes, fines, penalties, licenses, fees, obligations and requirements of whatever kind shall be imposed upon all corporations of such other State or nation doing business within this State and upon their agents here; Provided, That nothing herein shall be held to repeal any duty, condition or requirement now imposed by law upon such corporations of other States or nations transacting business in the State.

Property of corporation to be taxed like that of an individual. § 110, post. Franchise tax. Act of 1884, April 18, post.

**Service of prerogative writ on foreign corporation.**

§ 102. In any proceeding in any court of this State against a foreign corporation requiring the use of any prerogative writ, such writ may be served upon the president, vice-president, secretary or other head officer or any director, either personally or by leaving a copy at the dwelling-house or usual place of abode of such officer or director, or upon any general agent, attorney, solicitor, superintendent or manager of such corporation.

Service of process on foreign corporation. § 88, ante.



**Failure to make return; writs, how enforced.**

§ 103. In case any such corporation, after the service of any such writ, as aforesaid, shall neglect or refuse to make a proper return thereto, or shall neglect or refuse to obey the command of any such writ, when issued upon any judgment, order or decree of the supreme court, court of chancery, or any of the circuit courts of this State, and served as aforesaid, within the time prescribed by such writ, said court may enforce such writs by attachment or sequestration of the property, rights and credits of the corporation within this State.

#### **XI. Merger of Corporations.**

**Corporations may merge or consolidate.**

§ 104. Any two or more corporations organized or to be organized under any law or laws of this State for the purpose of carrying on any kind of business of the same or a similar nature may merge or consolidate into a single corporation, which may be either one of said merging or consolidating corporations, or a new corporation to be formed by means of such merger and consolidation; but the provisions of this act relative to merger and consolidation shall not apply to any railroad company, insurance company (except companies for the insurance or guaranty of the title to lands), banking company, savings bank or other corporation intended to derive profit from the loan and use of money, turnpike company or canal company.

**Mode and proceedings therefor.**

§ 105. The consolidation or merger shall be made under the conditions, provisions, restrictions, and with the powers hereinafter mentioned:

I. The directors of the several corporations proposing to merge or consolidate may enter into a joint agreement under the corporate seals of the respective corporations, for the merger or consolidation of said corporations, and prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation (if one shall be so formed or created), or of the consolidated corporation, as the case may be; the number, names and places of residence of the first directors and officers of such new or consolidated corporation (who shall hold their offices until their successors be chosen or appointed, either according to law or according to the by-laws of the said corporation); the number of shares of the capital stock, whether common or preferred, and the amount or par value of each share of such new or consolidated corporation; and the manner of converting the capital stock of each of said merging or consolidating corporations into the stock or obligations of such new or consolidated corporation, and in case of the creation of a new corporation, how and when the directors and officers

shall be chosen or appointed; together with all such other provisions and details as such first-mentioned directors shall deem necessary to perfect the merger consolidation of said corporation.

II. The agreement shall be submitted to the stockholders of each of said merging or consolidating corporations, separately, at a meeting thereof, to be called for the purpose of taking the same into consideration; and twenty days' notice of the time, place and object of such meeting shall be mailed to the last known post-office address of each of such stockholders; and at the said meeting of stockholders the said agreement of such directors shall be considered, and a vote of the stockholders of each corporation by ballot shall be taken separately, for the adoption or rejection of the same, each share of stock entitling the holder thereto to one vote, and said ballots shall be cast in person or by proxy; and if the votes of the holders of two-thirds of all the capital stock of each of the said merging or consolidating corporations shall be for the adoption of said agreement, that fact shall be certified thereon by the secretary of each of the respective corporations, under the seal thereof, and the agreement, so adopted and so certified, shall be filed in the office of the secretary of State, and shall from thence be deemed and taken to be the agreement and act of merger or consolidation of the said corporations, and a copy of said agreement and act of merger or consolidation, duly certified by the secretary of State under the seal thereof, shall be evidence of the existence of such new or consolidated corporation.

Quorum at meeting. § 17, ante. Meetings to be held in State. § 44, ante. Proxies, requirements of, etc. §§ 17, 36, ante.

**Consolidated corporations shall be regarded as one corporation.**

§ 106. Upon making and perfecting the said agreement and act of merger or consolidation, and filing the same in the office of the secretary of State, the several corporations shall be one corporation, by the name provided in said agreement (in case a new corporation shall be created thereby), or by the name of the consolidated corporation into which said other contracting corporation or corporations shall be so merged or consolidated, as the case may be, and possessing all the rights, privileges, powers and franchises, as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so merged or consolidated, except as altered by the provisions of this act.

Name may be changed. § 27, ante. Name not to be the same as of a corporation already in existence. § 8, ante. Name to be displayed at principal office. § 45, ante.

**Rights and franchises of each to be vested in new corporation.**

§ 107. Upon the consummation of said act of merger or consolidation, all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations, shall be vested in the consolidated corporation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective former corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this State, vested in either of such corporations, shall not revert or be in any way impaired by reason of this act; Provided, That all rights of creditors and all liens upon the property of either of said former corporations shall be preserved unimpaired, and the respective former corporations may be deemed to continue in existence, in order to preserve the same; and all debts, liabilities and duties of either of said former corporations shall thenceforth attach to said consolidated corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

**Rights of dissenting stockholders.**

§ 108. If any of the corporations so authorized to merge or consolidate shall have the right to exercise any franchise for public use, and any stockholder thereof not voting in favor of such agreement shall dissent therefrom and shall refuse or neglect to convert his stock into the stock of such consolidated corporation, or to dispose thereof in the manner and on the terms specified in such agreement, such dissenting stockholder or such consolidated corporation may, at any time within thirty days after the adoption and filing of the agreement of consolidation, apply by petition to the circuit court of the county in which the chief office of the corporation whose stockholders shall so dissent or neglect, was or is located, on reasonable notice to be prescribed by said court to said consolidated corporation, or to such dissenting stockholder, as the case may be, for the appointment of three disinterested appraisers to appraise the full market value of his stock, without regard to any depreciation or appreciation thereof in consequence of the said merger or consolidation, and whose award (or that of a majority of them) when confirmed by the said court, shall be final and conclusive on all parties, and said consolidated corporation shall pay to such stockholder the value of his stock as aforesaid; and on receiving such payment, or on a tender thereof, or in case of any legal disability or absence from the State, on the pay-

ment of such award into said court, said stockholder shall transfer his stock to the said consolidated corporation to be disposed of by the directors thereof, or to be retained for the benefit of the remaining stockholders; and in case the said award is not so paid within thirty days from the filing of said award and confirmation by said court, and notice thereof to be given in the manner aforesaid unto said stockholder or said consolidated corporation, the amount of the award shall be a judgment against said corporation, and may be collected as other judgments in said court are by law collectible.

**Consolidated corporations may issue bonds and mortgages.**

§ 109. When two or more corporations are merged or consolidated the consolidated corporation shall have power and authority to issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make or obligations it will be required to assume, in order to effect such merger or consolidation; to secure the payment of which bonds or obligations it shall be lawful to mortgage its corporate franchises, rights, privileges and property, real, personal and mixed; Provided, Such bonds shall not bear a greater rate of interest than six per centum per annum; the consolidated corporation may purchase, acquire, hold and dispose of the stocks of other corporations of this State or elsewhere, and exercise in respect thereto all the powers of stockholders thereof, and may issue capital stock, either common or preferred, or both, to such an amount as may be necessary, to the stockholders of such merging or consolidating corporations in exchange or payment for their original shares, in the manner and on the terms specified in the agreement of merger or consolidation; which may fix the amount and provide for the issue of preferred stock based on the property or stock of the merging or consolidating corporations conveyed to the consolidated corporation, as well as upon money capital paid in.

Powers of corporations generally to issue bonds and mortgages. §§ 1, 7, 70, ante. Acquisition of stock of other corporations. § 51, ante. Common and preferred stock, regulations as to. § 18, ante.

**XII. Taxation.****Real and personal property; how taxed.**

§ 110. All real and personal property of every corporation shall be taxed the same as the real and personal property of an individual; Provided, That this action\* shall not

\* So in original.



## Taxation; lost certificates — Act of 1896, §§ 111, 112.

apply to railway, turnpike, insurance, canal or banking corporations, or to savings banks, or to cemeteries, church property, or purely charitable or educational associations.

Tax on filing certificate. § 114, post. Franchise tax. Act of 1884, April 18, post.

[Where real estate of a corporation is situate partly in one township and partly in another, and is occupied by the corporation, it will be subject to taxation in the township where the corporation resides. *State v. Warford*, 37 N. J. L. R. 397; *Warren Mfg. Co. v. Dalrymple*, 56 Id. 449; s. c., 28 Atl. Rep. 671. The residence of a corporation, for purposes of taxation of its real estate, is the township in which its principal office is. *Id.* As to taxation of corporations, see *State v. Hornbaker*, 41 N. J. L. R. 519; *Gas Light Co. v. Jersey City*, 46 Id. 194; *Hedge Co. v. Craig*, 51 Id. 437; s. c., 17 Atl. Rep. 941. Above section is constitutional, and corporations embraced within its provisions are taxable as therein provided. *State v. Yard*, 42 N. J. L. R. 357.

By a supplement to the General Tax Law (app. April 11, 1866, Rev. 1156, § 74), it was provided that all private corporations in this State, except banking institutions, shall be taxed at the full amount of their capital stock paid in and accumulated surplus, and persons holding the capital stock of such corporation shall not be assessed therefor. This provision is not repealed by section 105 of the Corporation Act of 1875 (from which the above section is derived), nor by the supplement of 1878. The design of these latter acts was to relieve the hardships of the act of 1866, and establish the better and fairer method of taxation by making the property of the corporation the subject of taxation, instead of the stock and surplus. *Jersey City Gas Co. v. Jersey City*, 46 N. J. L. R. 194.

The franchise of a corporation cannot be taxed on property under this section or the act of 1866. *Passaic Water Co. v. Paterson*, 56 N. J. L. R. 471; s. c., 29 Atl. Rep. 185.

#### Power to tax corporations.

The power of taxation is necessarily unlimited in its extent, unless qualified or restrained by constitutional provisions. This unlimited power of taxation does not, however, include the power to levy an arbitrary sum from a corporation. It extends only to the right to subject the property of a corporation to such taxation, as by the general laws of the State may be imposed on the kind of property of which it is the owner, or to subject it to such taxation as corporations as a class are made liable to. Beyond the exercise of this taxation, the legislature cannot assess upon a simple corporation an arbitrary assessment, and compel its payment. *State ex rel. Trenton Water Power Co. v. Parker*, 32 N. J. L. R. 426.

A State cannot tax a foreign corporation upon a principle different from that in which she taxes one of her domestic corporations. *Erle R. R. Co. v. State*, 31 N. J. L. R. 531.

Where the real estate of a corporation is situated partly in one township and partly in an-

other, and is occupied by the corporation, it will be subject to taxation in the township where the corporation resides. *State ex rel. Warren Co. v. Warford*, 37 N. J. L. R. 397.

An incorporated company of this State is not liable to be taxed for so much of its capital as is represented by stock standing in the name of non-resident stockholders and owned by them. *State v. Thomas*, 26 N. J. L. R. 181.

#### Exemptions.

Corporations are entitled to have deducted from the amount of their capital stock paid in and accumulated surplus, the amount of the bonds of this State and the stock and securities of the United States, owned by them at the time of the assessment. *Newark City Bank v. Assessor*, 31 N. J. L. R. 13; *State ex rel. Easton Bridge Co. v. Metz*, 33 Id. 199; *State ex rel. People's Ins. Co. v. Parker*, 35 Id. 479; 36 Id. 575; *State ex rel. International Ins. Co. v. Haight*, 35 Id. 279. (See act of 1893, P. L., p. 485; app. March 27.)

#### XIII. Lost Certificates of Stock.

##### New certificates may be issued.

§ 111. Every corporation may issue a new certificate of stock in the place of any certificate theretofore issued by it, alleged to have been lost or destroyed, and the directors authorizing such issue of a new certificate may, in their discretion, require the owner of the lost or destroyed certificate, or his legal representatives, to give the corporation a bond, in such sum as they may direct, as indemnity against any claim that may be made against such corporation; a new certificate may be issued without requiring any bond when, in the judgment of the directors, it is proper so to do.

Each shareholder to have certificate. § 19, ante.

##### Proceedings in case of refusal to issue new certificates.

§ 112. Whenever any corporation shall have refused to issue a new certificate of stock in place of one theretofore issued by it, or by any corporation of which it is the lawful successor, alleged to have been lost or destroyed, the owner of the lost or destroyed certificate, or his legal representatives, may apply to the circuit court of the county in which the principal office of the corporation is located for an order requiring the corporation to show cause why it should not be required to issue a new certificate of stock in place of the one so lost or destroyed; such application shall be by petition, duly verified, in which shall be stated the name of the corporation, the number and date of the certificate, if known or ascertainable by the petitioner, the number of shares of stock named therein, and to whom issued, and a statement of the circumstances attending such loss or destruction; thereupon said court shall make an order requiring the cor-



poration to show cause, at a time and place therein mentioned, why it should not be required to issue a new certificate of stock in place of the one described in the petition; a copy of the petition and order shall be served upon the president or other head officer of the corporation, or on the cashier, secretary or treasurer thereof, personally, at least ten days before the time designated in the order.

#### Court may proceed in summary manner.

§ 113. At the time and place specified in the order, and on proof of due service thereof, the court shall proceed in a summary manner and in such mode as it may deem advisable to hear the proof and allegations offered in behalf of the petitioner, or the corporation, or other interested party, relative to the subject-matter of inquiry, and if upon such inquiry the court shall be satisfied that the petitioner is the lawful owner of the number of shares of the capital stock, or any part thereof, described in the petition, and that the certificate therefor has been lost or destroyed and cannot, after due diligence, be found, and that no sufficient cause has been shown why a new certificate should not be issued in place thereof, it shall make an order requiring the corporation or other party, within such time as shall be therein designated, to issue and deliver to the petitioner a new certificate for the number of shares of the capital stock of the corporation, which shall be specified in the order as owned by the petitioner, and the certificate for which shall have been lost or destroyed; in making the order the court shall direct that the petitioner deposit such security, or file such bond in such form and with such security as to the court shall appear sufficient to indemnify any person other than the petitioner who shall thereafter appear to be the lawful owner of such certificate stated to be lost or stolen; and the court may also direct publication of such notice either preceding or succeeding the making of such final order, as it shall deem proper; any person who shall thereafter claim any rights under the certificate so lost or destroyed shall have recourse to said indemnity, and the corporation shall be discharged from all liability to such person by reason of compliance with the order; and obedience to said order may be enforced by the court by attachment against the officers of the corporation, on proof of their refusal to comply with the same.

#### XIV. Fees on Filing Certificate; Sundry Provisions.

##### Fees for filing certificates.

§ 114. On filing any certificate or other paper, relative to corporations, in the office of the secretary of State, the following fees and taxes shall be paid to the secretary of State, for the use of the State: for certificate

of incorporation, twenty cents for each thousand dollars of the total amount of capital stock authorized, but in no case less than twenty-five dollars; increase of capital stock, twenty cents for each thousand dollars of the total increase authorized, but in no case less than twenty dollars; consolidation and merger of corporations, twenty cents for each thousand dollars of capital authorized beyond the total authorized capital of the corporation merged or consolidated, but in no case less than twenty dollars; extension or renewal of corporate existence of any corporation, the same as required for the original certificate of organization by this act; dissolution of corporation, change of name, change of nature of business, amended certificates of organization (other than those authorizing increase of capital stock), decrease of capital stock, increase or decrease of par value of or number of shares, twenty dollars; for filing list of officers and directors, one dollar; filing copy of charter and statement of foreign corporation and issuing certificate of authority to transact business, ten dollars; and for all certificates not hereby provided for, five dollars; Provided, That no fees shall be required to be paid by any religious or charitable society or association, or educational association having no capital stock.

##### Death of incorporators; survivors may designate others.

§ 115. When one or more of the commissioners or incorporators of any corporation, created by or under any general or special act, shall have died before the corporation shall have been organized, pursuant to law, the survivors or survivor may in writing designate other persons who may take the place and act instead of those deceased, in the organization; and the organization so effected by their aid shall be as effectual in law as if it had been effected by all the original commissioners or incorporators.

##### Mutual associations may have capital stock.

§ 116. The members of any mutual association heretofore or hereafter incorporated, may provide for and create a capital stock of such corporation, upon the consent in writing of all the members of corporation, and may provide for the payment of such stock, and fix and prescribe the rights and privileges of the stockholders therein.

For provisions relating to stock, see §§ 18-30, ante.

##### Secretary of State shall compile and publish list of corporations.

§ 117. The secretary of State shall annually compile from the records of his office, and publish a complete list, in alphabetical order, of the original and amended certificates of

## Repeal — Act of 1896, §§ 118, 118a.

incorporation filed during the preceding year, together with the location of the principal office of each in this State, the name of the agent in charge thereof, the amount of the authorized capital stock, the amount with which business is to be commenced, the date of filing the certificate and the period for which the corporation is to continue.

**Repealing clause; vested rights not impaired.**

§ 118. The act entitled "An act concerning corporations" (Revision), approved April seventh, one thousand eight hundred and seventy-five, and all acts amendatory thereof and supplemental thereto, except so far as herein expressly re-enacted, are hereby repealed; but no existing corporation shall be thereby dissolved, nor shall the powers specified in its charter or certificate of incorporation be thereby impaired or limited, and vested rights acquired under the repealed acts and actually exercised and enjoyed shall not be divested or disturbed, but no special provision relating to taxation, or immunity or exemption therefrom, contained in any special charter, shall be revived or continued by anything in this act; all acts and parts of acts, general and special, inconsistent with this act are hereby repealed; but this repealer shall not revive any act heretofore repealed.

**Acts repealed.**

§ 118a. (An act to repeal sundry acts relative to corporations.)

Approved April 21, 1896.

1. The act entitled "An act authorizing corporations created by special charters or otherwise to remove their principal office from the place designated in their charters to such other place as may be deemed best by the corporations," approved February twenty-sixth, one thousand eight hundred and eighty, is hereby repealed.

2. The act entitled "An act for the relief of corporations organized under general laws," approved March thirty-first, one thousand eight hundred and seventy-five, is hereby repealed.

3. An act entitled "A further supplement to an act entitled "An act to prevent fraudulent elections by incorporated companies, and to facilitate proceedings against them," approved April fifteenth, one thousand eight hundred and sixty-six, which supplement was approved March seventeenth, one thousand eight hundred and seventy-four, is hereby repealed.

4. The act entitled "An act concerning corporations," approved March second, one thousand eight hundred and eighty-two, and the supplement thereto, approved March twenty-second, one thousand eight hundred and ninety-five, are hereby repealed.

5. The act entitled "An act for the relief of insolvent corporations," approved March

twenty-third, one thousand eight hundred and eighty-two, is hereby repealed.

6. The act entitled "An act for the relief of holders of stock of any corporation of this State whose certificates of stock have been lost or destroyed," approved March twenty-eighth, one thousand eight hundred and eighty-two, is hereby repealed.

7. The act entitled "An act to provide for agreements between creditors and insolvent companies," approved May fourteen, one thousand eight hundred and eighty-four, is hereby repealed.

8. The act entitled "An act relative to the filing of certificates of incorporation," passed April sixth, one thousand eight hundred and eighty-six, is hereby repealed.

9. The act entitled "An act relative to the titles of corporations," approved March seventh, one thousand eight hundred and eighty-eight, is hereby repealed.

10. The act entitled "An act concerning corporations of this State, and of other States doing business in this State," approved April fourth, one thousand eight hundred and eighty-eight, is hereby repealed.

11. The act entitled "An act relating to the consolidation of corporations formed under the act entitled "An act concerning corporations," approved April seventh, one thousand eight hundred and seventy-five, and the acts amending and supplementing the same, for the purposes of the improvement and sale of lands, the construction, maintenance and operation, of hotels and carrying on the business of an inn-keeper, and the transportation of goods, merchandise or passengers upon land or water," approved April seventeenth, one thousand eight hundred and eighty-eight, is hereby repealed.

12. The act entitled "An act to authorize corporations formed under the act entitled "An act concerning corporations," approved April seventh, one thousand eight hundred and seventy-five, and the acts amending and supplementing the same, for the purpose of the improvements and sale of lands, or the building, operation and maintenance of hotels and carrying on the business of an inn-keeper, or of the transportation of goods, merchandise or passengers upon land or water, to purchase and hold stock in any one or more of said companies in certain cases," approved April seventeenth, one thousand eight hundred and eighty-eight, is hereby repealed.

13. The act entitled "An act concerning corporations," approved April third, one thousand eight hundred and eighty-nine, and the amendment thereto, approved March twenty-second, one thousand eight hundred and ninety-five, are hereby repealed.

14. The act entitled "An act concerning corporations," passed May twenty-third, one thousand eight hundred and ninety, is hereby repealed.

15. The act entitled "An act to provide a method for appointing commissioners in the



Repeal; extension of existence — Act of 1896, §§119-121.

place of other commissioners who have deceased or who shall fail to act in certain cases touching the organization of companies, and providing for the organization of companies in certain cases," approved June sixth, one thousand eight hundred and ninety, is hereby repealed.

16. The act entitled "An act to authorize corporations formed for the purpose of constructing or repairing either railroads, water, gas, or electric works, tunnels, bridges, viaducts, canals, hotels, wharves, piers or any or all such works of internal improvement or public use of utility, to subscribe for, take, pay for in property, materials or service, hold, use and dispose of stock or bonds in any corporation formed for the purpose of constructing, maintaining and operating any such public works," approved April sixth, one thousand eight hundred and ninety-one, is hereby repealed.

17. The act entitled "An act relative to the residence of directors of corporations in this State," approved March tenth, one thousand eight hundred and ninety-two, is hereby repealed.

18. The act entitled "An act concerning corporations," approved March tenth, one thousand eight hundred and ninety-two, is hereby repealed.

19. The act entitled "An act relative to corporations," approved May fifteenth, one thousand eight hundred and ninety-four, and the supplement thereto, approved March fourteenth, one thousand eight hundred and ninety-five, are hereby repealed.

20. The act entitled "An act to secure to laborers and workmen in the employ of corporations a prior lien for wages in cases of insolvency," approved April eighth, one thousand eight hundred and ninety-two, is hereby repealed.

21. Nothing herein shall impair or annul any vested rights, privileges or powers heretofore obtained and used under authority of said acts or any of them, and all corporations which have heretofore availed themselves of the provisions of said acts may continue to enjoy the rights and advantages which they now enjoy and exercise by virtue thereof.

#### **Corporations may extend corporate existence.**

§ 119. Any corporation, created by special charter, or under a general law, for any objects which are allowed by this act, may extend its corporate existence in the manner prescribed in the twenty-seventh section of this act; Provided, That if such corporation possesses franchises, powers, privileges, immunities or advantages which could not be obtained under this act, such extension shall not continue, renew or extend such franchises, powers, privileges, immunities or ad-

vantages, but the filing of the certificate of extension shall operate as a waiver and abandonment of such franchises, powers, privileges and advantages.

Supplement of February 2, 1897, P. L., p. 11.

#### **Extension of existence of stock yard companies.**

§ 120. Whereas, the class of corporations existing in this State relating to the business of stock yards or cattle markets, or both, have certain peculiar privileges and franchises incident to business of that kind, and which could not be obtained under the act to which this is a supplement; therefore, be it enacted, etc.,

1. If any such corporation shall, by virtue of the twenty-seventh section of said act to which this is a supplement, extend its corporate existence in the manner therein prescribed, such action shall not be a waiver or abandonment of the peculiar privileges and franchises above mentioned.

Supplement of February 23, 1897, P. L., p. 23.

#### **Statutory liabilities created by other States not to be enforced against stockholders and officers in this State.**

§ 121. 1. No action or proceeding shall be maintained in any court of this State against any stockholder, officer or director of any domestic corporation for the purpose of enforcing any statutory personal liability of such stockholder, officer or director for or upon any debt, default or obligation of such corporation, whether such statutory personal liability be created by or arise from the statutes or laws of any other State or foreign country.

2. No action or proceeding shall be maintained in any court of law of this State against any stockholder, officer or director of any domestic or foreign corporation by or on behalf of any creditor of such corporation to enforce any statutory personal liability of such stockholder, officer or director for or upon any debt, default or obligation of such corporation, whether such statutory personal liability be deemed penal or contractual, if such statutory personal liability be created by or arise from the statutes or laws of any other State or foreign country, and no pending or future action or proceeding to enforce any such statutory personal liability shall be maintained in any court of this State other than in a nature of an equitable accounting for the proportionate benefit of all parties interested, to which such corporation and its legal representatives, if any, and all of its creditors and all of its stockholders shall be necessary parties.

Supplement of March 30, 1897, P. L., p. 124.



Franchise tax — Act of April 18, 1884, §§ 1, 2.

### III. FRANCHISE TAX.

- Sec. 1. Franchise tax to be laid upon telegraph and certain other companies.
2. Officers to make annual report to State board of assessors.
  3. Penalties for false statement; a failure to make statement.
  4. Amount of tax to be paid by corporations.
  5. Duties and powers of State board of assessors.
  6. Tax to be a debt; how collected; preferred debt in case of insolvency.
  7. Injunction against company in arrears for three months.
  8. Act not to apply to foreign fire insurance companies.
  9. Effect of failure to pay tax.
  10. Comptroller to report list of delinquents; governor to issue proclamation declaring repeal of charters.
  11. Proclamation to be filed.
  12. Penalty for exercising powers after proclamation.
  13. Proceedings against corporations in arrears.
  14. When governor may correct mistakes.
  15. Review of excessive or unjust assessments.
  16. Governor with advice of attorney-general may renew void charters.
  17. Surety companies to pay tax on gross premiums.

Franchise tax to be laid upon telegraph and certain other companies.

Section 1. Every telegraph, telephone, cable or electric light company, every express company, not owned by a railroad company and otherwise taxed, every gas company, palace or parlor or sleeping car company, every oil or pipe line company, every life insurance company incorporated under the laws of this State, and every fire, marine, live stock, casualty or accident insurance company, doing business in this State, except mutual fire insurance companies which do not issue policies on the stock plan, shall pay an annual tax, for the use of the State, by way of a license for its corporate franchise as hereinafter mentioned; Provided, however, That no company or society shall be construed to be a life insurance company doing business in this State within the purview of this act, which, by its act or certificate of incorporation, shall have for its object the assistance of sick, needy or disabled members, the defraying funeral expenses of deceased members, and to provide for the wants of the widows and families of members after death.

"An act to provide for the imposition of State taxes upon certain corporations and for the col-

lection thereof." Approved April 18, 1884; § 1, as amended by act of March 17, 1892; P. L. 1892, p. 136.

Officers to make annual report to State board of assessors.

§ 2. On or before the first Tuesday of May next, and annually thereafter, it shall be the duty of the president, treasurer or other proper officer of any corporation of the character specified in the preceding section, to make report to the State board of assessors, appointed and to be appointed under the act entitled "An act for the taxation of railroad and canal property," stating specifically the following particulars, namely: each telegraph, telephone, cable and express company, not owned by a railroad company and otherwise taxed, shall state the gross amount of its receipts from business done in this State for the year preceding the first day of January prior to the making of such report; each gas company and electric light company shall state the amount of its receipts for light or power supplied within this State for the year preceding the first day of February prior to the making of such report, and the amount of dividends declared or paid during the same time; each parlor, palace or sleeping car company shall state the gross amount of its receipts for fare or tolls for transportation of passengers within this State during the same time; each oil or pipe line company engaged in the transportation of oil or crude petroleum shall state the gross amount of its receipts from the transportation of oil or petroleum through its pipes or in and by its tanks or cars in this State during the same time; each fire, marine, live stock, casualty or accident insurance company shall state the total amount of premiums received by it for insurance upon the lives of persons resident or property located within this State, during the same time.

Id., § 2, as amended by act of March 17, 1892; P. L. 1892, p. 136.

Penalties for false statement, or failure to make statement.

§ 3. If any officer of any company required by this act to make a return, shall, in such return, make a false statement, he shall be deemed guilty of perjury; if any such company shall neglect or refuse to make such return within the time limited as aforesaid, the State board of assessors shall ascertain and fix the amount of the annual license fee or franchise tax, and the basis upon which the same is determined, in such manner as may be deemed by them most prac-

## Franchise tax — Act of April 18, 1884, §§ 4, 5.

licable, and the amount fixed by them shall stand as such basis of taxation under this act.

Id., § 3, as amended by act of March 17, 1892; P. L. 1892, p. 137.

**Amount of tax to be paid by corporations.**

§ 4. Each telegraph, telephone, cable and express company shall pay to the State an annual license fee or franchise tax at the rate of two per centum upon the gross amount of its receipts so returned or ascertained; that each gas company and electric light company shall pay to the State an annual license fee or franchise tax at the rate of one-half of one per centum upon the gross amount of its receipts so returned or ascertained, and five per centum upon the dividends in excess of four per centum so paid or declared by said company; that each oil or pipe line company shall pay to the State an annual license fee or franchise tax at the rate of eight-tenths of one per centum upon the gross amount of its receipts so returned or ascertained; that each insurance company other than life shall pay to the State an annual license fee or franchise tax at the rate of one per centum upon the gross amount of its premiums so returned or ascertained; that each life insurance company incorporated under the laws of this State shall pay to the State an annual license fee or franchise tax of one per centum upon the amount of its surplus on the thirty-first day of December next preceding the time of such payment, as fixed in section five, and in addition thereto a further annual license fee or franchise tax of thirty-five one-hundredths of one per centum upon the total gross insurance premiums collected by such companies of this State during the year ending December thirty-first next preceding; Provided, That any taxes, or charges in lieu of taxes, that may hereafter be collected by this State from like insurance companies of other States shall be credited in rebate of the taxes hereby imposed on companies of this State, in proportion to the several amounts payable by the several companies of this State under this act: the commissioner of banking and insurance shall ascertain and report to the State board of assessors all facts necessary to enable the said board to ascertain and fix the amount of taxation to be paid by life insurance companies under this act, and shall ascertain and report to said board the amount of rebate to be allowed to said companies as herein provided, and shall also certify to each of said companies the amount of such taxation and the rebate allowed under this act; that each parlor, palace or sleeping car company shall pay to the State an annual license fee or franchise tax at the rate of two per centum upon the gross amount of its receipts so returned or ascertained; if any oil or pipe line company has part of its trans-

portation lines in this State and part thereof in another State or States, such company shall return a statement of its gross receipts for transportation of oil or petroleum over its whole line, together with a statement of the whole length of its line and the length of its line in this State; such company shall pay an annual license fee or franchise tax to the State at the aforesaid rate upon such proportion of its said gross receipts as the length of its line in this State bears to the whole length of its line; that all other corporations incorporated under the laws of this State, and not hereinbefore provided for, shall make annual return to the State board of assessors of such information as may be required by said board to carry out the provisions of this act, and shall pay an annual license fee or franchise tax of one-tenth of one per centum on all amounts of capital stock issued and outstanding up to and including the sum of three million dollars; on all sums of capital stock issued and outstanding in excess of three million dollars and not exceeding five million dollars, an annual license fee or franchise tax of one-twentieth of one per centum, and the further sum of fifty dollars per annum per one million dollars, or any part thereof, on all amounts of capital stock issued and outstanding in excess of five million dollars; Provided, That this act shall not apply to railway, canal or banking corporations, or to savings banks, cemeteries or religious corporations, or to purely charitable or educational associations, or manufacturing or mining corporations, at least fifty per centum of whose capital stock issued and outstanding is invested in mining or manufacturing carried on within this State; if any manufacturing or mining company, carrying on business in this State shall have less than fifty per centum of its capital stock, issued and outstanding, invested in business carried on within this State, such company shall pay the annual license fee or franchise tax herein provided for companies not carrying on business in this State, but shall be entitled, in the computation of such tax, to a deduction from the amount of its capital stock issued and outstanding of the assessed value of its real and personal estate so used in manufacturing or mining.

Id., § 4, as amended by the act of March 16, 1891; P. L., p. 150; and further amended by act of March 17, 1892; P. L. 1892, p. 137.

**Duties and powers of state board of assessors.**

§ 5. The State board of assessors shall certify and report to the comptroller of the State, on and before the first Monday of June in each year, a statement of the basis of the annual license fee or franchise tax as returned by each company to or be ascertained by the said board, and the amount of tax due thereon respectively, at the rates

## Franchise tax — Act of April 18, 1884, §§ 6-8.

fixed by this act; such tax shall thereupon become due and payable, and it shall be the duty of the State treasurer to receive the same; if the tax of any company remains unpaid on the first day of July, after the same becomes due, the same shall thenceforth bear interest at the rate of one per centum for each month until paid; the State board of assessors shall have power to require of any corporation subject to tax under this act such information or reports touching the affairs of such company as may be necessary to carry out the provisions of this act; and may require the production of the books of such company, and may swear and examine witnesses in relation thereto; the comptroller shall receive as compensation for his services under this act and under the act entitled "An act for the taxation of railroad and canal property," approved April tenth, one thousand eight hundred and eighty-four, the sum of five hundred dollars annually.

Id., § 5, as amended by act of March 17, 1892. P. L. 1892, p. 140.

**Tax is to be a debt; how collected; preferred debt in case of insolvency.**

§ 6. Such tax, when determined, shall be a debt due from such company to the State, for which an action at law may be maintained after the same shall have been in arrears for the period of one month; such tax shall also be a preferred debt in case of insolvency.

Id., § 6.

**Injunction against company in arrears for three months.**

7. In addition to other remedies for the collection of such tax, it shall be lawful for the attorney-general, either of his own motion, or upon request of the State comptroller, whenever any tax due under this act from any company shall have remained in arrears for a period of three months after the same shall have become payable, to apply to the court of chancery, by petition in the name of the State, on five days' notice to such corporation, which notice may be served in such manner as the chancellor may direct, for an injunction to restrain such corporation from the exercise of any franchise, or the transaction of any business within this State until the payment of such tax and interest due thereon, and the costs of such application, to be fixed by the chancellor; the said court is hereby authorized to grant such injunction, if a proper case appears, and upon the granting and service of such injunction, it shall not be lawful for such company thereafter to exercise any franchise or transact any business in this State until such injunction be dissolved.

Id., § 7.

**Act not to apply to foreign fire insurance companies.**

§ 8. This act shall not apply to or in any manner affect the tax upon the premiums obtained in this State by foreign fire insurance companies and their agents, which tax shall be in lieu of the tax herein provided and shall be collected and distributed as is specially provided by law in relation thereto.

Id., § 8.

**Application of the act.**

"The scheme of this particular taxing act seems to be to impose taxes on three classes of corporations — certain specified corporations doing business in the State wherever chartered, those not doing business in this State, but holding their charters under State authority, and a class of unspecified corporations, which must be few in number, holding charters under and performing their functions in the State.

"In the former class different provisions for taxation as amongst themselves are adopted, and in the second and third classes named a franchise tax is imposed based upon the amount of their capital stock." Standard Underground Cable Co. v. Attorney-General, 46 N. J. Eq. R. 270; s. c., 19 Atl. Rep. 733.

As to the first class, both domestic and foreign corporations are included. Pipe Line Co. v. Berry, 52 N. J. L. R. 308; s. c., 53 id. 212; s. c., 19 Atl. Rep. 665.

**Constitutionality.**

The Federal Constitution will not invalidate a State tax upon a corporation merely because the corporation has power to engage in foreign or interstate commerce; the corporation must be actually engaged in such commerce to secure the immunity. Honduras Co. v. Board of Assessors, 54 N. J. L. R. 278.

A franchise tax imposed upon a company as the price of the right and privilege of being a corporation, may be exacted by the State granting the franchise, no matter how the corporate property may be invested or employed, or where it may be situated. The yearly license fee or tax levied upon miscellaneous corporations under this act is such a franchise tax, and is constitutional even as against domestic corporations engaged in foreign commerce. Id. And see Lumberville Bridge Co. v. Assessors, 55 N. J. L. R. 529; s. c., 26 Atl. Rep. 711.

The tax imposed by this act is a license or franchise tax. It is not a tax on property and is not a violation of the clause of the Constitution which provides that "property shall be assessed for taxes under general rules, and by uniform rules, according to its true value." Standard Underground Cable Co. v. Attorney-General, 46 N. J. Eq. R. 270; s. c., 19 Atl. Rep. 733; Pipe Line Co. v. Berry, 52 N. J. L. R. 308; s. c., 19 Atl. Rep. 665.

**Payment of tax; receiver.**

The tax is computed upon the basis of the capital stock issued and outstanding, and it is held



that stock is issued when the company has received and accepted subscriptions for the same, whether paid for or not. *American Pig Iron Co. v. Assessors*, 56 N. J. L. R. 389; 29 Atl. Rep. 160.

As long as the corporation continues it is liable for this franchise tax. It continues after a receiver is appointed and until the dissolution of the company. *Kirkpatrick v. Assessors*, 57 N. J. L. R. 53; s. c., 29 Atl. Rep. 442.

When an insolvent corporation is of a public character, its property and work being dependent upon the franchise and the public being interested in the continuance of its work, its receiver must pay the State's franchise tax until the franchise of the corporation shall be sold. When the corporation is of a private character, he will not be obliged to pay any other franchise tax than that which was due at the time of his appointment, unless he shall realize from the assets of the company more than sufficient to pay its debts and the expenses of the receivership; then before distributing to stockholders he will pay any franchise tax that may have been assessed subsequent to his appointment. If the receiver of a private corporation shall continue its business, using its franchise, he shall pay the franchise tax assessed while he continues in business. In *re Mathers' Sons Co.*, 52 N. J. Eq. R. 607; s. c., 30 Atl. Rep. 321.

The fact that the company has ceased to do business and to use its franchise, even though compelled to do so by a decree of a court enjoining the company from using certain patents which form the basis of the company's business, does not relieve it from the duty to pay the franchise tax. If it wishes to withdraw from active business, it must, to escape taxation, take proceedings to dissolve in the manner prescribed by law. *Edison Phonograph Co. v. Assessors*, 55 N. J. L. R. 55; s. c., 25 Atl. Rep. 329; *Electro Pneumatic Transit Co.'s Case*, 51 N. J. Eq. R. 71; 26 Atl. Rep. 463.

### Exemptions.

A manufacturing corporation cannot claim the exemption until it has actually located its factory within the State and begun work under its charter, and it can claim exemption only while it is actually engaged in the business of manufacturing within the State. *Norton Construction Co. v. Assessors*, 53 N. J. L. R. 564; s. c., 22 Atl. Rep. 352.

To determine whether the company is entitled to the exemption, reference must be had to its actual business, for the business in which the capital of a company is invested, and not the objects for which the company was formed, as expressed in the certificate of incorporation, must be regarded. *Edison Phonograph Co. v. Assessors*, 55 N. J. L. R. 55; s. c., 25 Atl. Rep. 329.

Printing and publishing a newspaper is not manufacturing, but where a company is incorporated to conduct and prosecute the business of book printing and job printing, engraving, electrotyping and lithographing, and its capital is invested in the prosecution of that business, and it manufactures on orders only, it is a manufacturing company within the meaning of the

statute. *Evening Journal Assn. v. Assessors*, 47 N. J. L. R. 36; *Printing Co. v. Assessors*, 51 *Id.* 75; s. c., 16 Atl. Rep. 173.

### Injunction proceedings.

Under the act of the legislature imposing taxes upon certain corporations and providing for the collection thereof, the only power given to or duty imposed upon the Court of Chancery is to issue an injunction when the attorney-general presents a proper case. In *re Electric Pneumatic Transit Co.*, 51 N. J. Eq. R. 71; s. c., 26 Atl. Rep. 463. A message sent by telephone from one State to another is commerce between the States, and cannot be prohibited or regulated by injunction in either State against persons or corporations sending such messages, because they do not pay the taxes assessed against them by such State. In *re Penn. Tel. Co.*, 48 N. J. Eq. R. 91; s. c., 20 Atl. Rep. 846. When a receiver has been appointed for an insolvent corporation he is a necessary party to a petition by the State for an injunction to restrain the further exercise of any franchise or transaction of any business of the company by him because of the corporation's non-payment of the State's franchise tax. In *re Mathers' Sons*, 52 N. J. Eq. R. 607; s. c., 39 Atl. Rep. 321.]

### Effect of failure to pay tax.

§ 9. If any corporation heretofore or hereafter created shall for two consecutive years neglect or refuse to pay the State any tax which has been or shall be assessed against it under any law of this State and made payable into the State treasury, the charter of such corporation shall be void, and all powers conferred by law upon such corporation are hereby declared inoperative and void, unless the governor shall, for good cause shown to him, give further time for the payment of such taxes, in which cases a certificate thereof shall be filed by the governor in the office of the comptroller, stating the reasons therefor.

Supplement of April 21, 1896. § 1.

Comptroller to report list of delinquents; governor to issue proclamation declaring repeal of charters.

§ 10. On or before the first day of May in each year, the comptroller shall report to the governor a list of all the corporations which for two years next preceding such report have failed, neglected or refused to pay the taxes assessed against them under any law of this State as above, and the governor shall forthwith issue his proclamation, declaring under this act of the legislature that the charters of these corporations are repealed.

*Id.*, § 2.

### Proclamation to be filed.

§ 11. The proclamation of the governor shall be filed in the office of the secretary of

State, and published in such newspapers and for such length of time as the governor shall designate.

Id., § 3.

**Penalty for exercising powers after proclamation.**

§ 12. Any person or persons who shall exercise or attempt to exercise any powers under the charter of any such corporation after the issuing of such proclamation shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment not exceeding one year, or a fine not exceeding one thousand dollars, or both, in the discretion of the court.

Id., § 4.

**Proceedings against corporations in arrears.**

§ 13. After any corporation of this State has failed and neglected for the space of two consecutive years to pay the taxes imposed on it by law, and the comptroller of this State shall have reported such corporation to the governor of this State, as provided in said amendatory act, then it shall be lawful for the attorney-general of this State to proceed against said corporation in the court of chancery of this State for the appointment of a receiver, or otherwise, and the said court in such proceeding shall ascertain the amount of the taxes remaining due and unpaid by such corporation to the State of New Jersey, and shall enter a final decree for the amount so ascertained, and thereupon a fieri facias or other process shall issue for the collection of the same as other debts are collected, and if no property which may be seized and sold on fieri facias shall be found within the said State of New Jersey, sufficient to pay such decree, the said court shall further order and decree that the said corporation, within ten days from and after the service of notice of such decree upon any officer of said corporation upon whom service of process may be lawfully made, or such notice as the court shall direct, shall assign and transfer to the trustees or receiver appointed by the court, and\* chose in action, or any patent or patents, or any assignment of, or license under any patented invention or inventions owned by, leased or licensed to or controlled in whole or in part by said corporation, to be sold by said receiver or trustee for the satisfaction of such decree and no injunction theretofore issued nor any forfeiture of the charter of any such corporation shall be held to exempt such corporation from compliance with such order of the courts; and if the said corporation shall neglect or refuse within ten days from and after the service of such notice of such decree to assign and transfer the same to such receiver or trustee for sale as afore-

said, it shall be the duty of said court to appoint a trustee to make the assignment of the same, in the name and on behalf of such corporation, to the receiver or trustee appointed to make such sale, and the said receiver or trustee shall thereupon, after such notice and in such manner as required for the sale under fieri facias of personal property, sell the same to the highest bidder, and the said receiver or trustee, upon the payment of the purchase money shall execute and deliver to such purchaser an assignment and transfer of all the patents and interests of the corporation so sold, which assignment or transfer shall vest in the purchaser a valid title to all the right, title and interest whatsoever of said corporation therein, and the proceeds of such sale shall be applied to the payment of such unpaid taxes, together with the cost of said proceedings.

Id., § 5.

**When governor may correct mistakes.**

§ 14. Whenever it is established to the satisfaction of the governor that any corporation named in said proclamation has not neglected or refused to pay said tax within two consecutive years, or has been inadvertently reported to the governor by the comptroller as refusing or neglecting to pay the same as aforesaid, that the governor be and he is hereby authorized to correct such mistake and to make the same known by filing his proclamation to that effect in the office of the secretary of State.

Id., § 6.

**Review of excessive or unjust assessment.**

§ 15. 1. The officers of any corporation who shall consider the tax levied under the provisions of an act to which this act is a further supplement, excessive or otherwise unjust, may make application to the State board of assessors for a review of the assessment and a readjustment of the tax; Provided, There be filed with the said board within three months from the date of assessment a petition of appeal, duly verified according to law, stating specifically the grounds upon which the appeal is taken and the reasons why the tax is considered excessive or unjust; the State board of assessors shall thereupon proceed to investigate the contentions raised by the said petition of appeal; and for the purpose of such hearing, the officers of said corporation may be summoned to appear before said board, either in person or by attorney, and questioned as to the statements set forth in the said petition of appeal; if, in the opinion of a majority of the board, it shall appear that the tax so levied as aforesaid is excessive or unjust, they shall thereupon require the officers of the corporation to file with the board a corrected return, and upon said corrected return the assessment shall be adjusted and the tax reduced

\* So in original.

## Franchise tax; reorganization — Act of April 16, 1897.

or amended as in the opinion of the board shall seem proper.

Supplement of April 6, 1897; P. L., 176, § 1.

2. If the petition of appeal shall not be filed within three months from the date of assessment as aforesaid, the right to appeal to the State board shall be considered and treated as having been waived and the amount of tax levied shall be payable and collected as other taxes levied by said board.

Id., § 2.

Governor, with advice of attorney-general, may renew void charters.

§ 16. 1. If the charter of any corporation heretofore or hereafter created, shall become inoperative or void by proclamation of the governor, or by operation of law, for non-payment of taxes, the governor, by and with the advice of the attorney-general, may, at any time within two years thereafter, or after the default in the payment of such taxes, upon payment by said corporation to the secretary of State of such sum in lieu of taxes and penalties as to them may seem reasonable, but in no case to be less than the fees required as upon the filing of the original certificate of incorporation, permit such corporation to be reinstated and entitled to all its franchises and privileges, and upon such payment as aforesaid the secretary of State shall issue his certificate en-

titling such corporation to continue its said business and its said franchises.

2. Nothing herein contained shall relieve said corporation from penalty of forfeiture of franchises in case of failure to pay future taxes imposed as in said act provided.

Supplement of March 25, 1898; P. L., p. 182.

**Surety companies to pay tax on gross premiums.**

§ 17. 1. Each surety company doing business within this State under the authority of an act entitled "An act relating to the formation of surety companies and regulating surety companies doing business in this State," approved March twentieth, one thousand eight hundred and ninety-five, shall make return annually to the State board of assessors of the amount of its premiums received within this State for the year preceding the first day of February prior to the making of such report, and shall pay to this State a tax at the rate of two per centum upon the gross amount of said premiums so returned or ascertained, which return shall be made and taxes assessed and collected under and in accordance with the provisions of the act to which this act is a supplement and the several supplements thereto and amendments thereof, and that such surety companies shall not be liable to taxation under the insurance acts of this State.

Supplement of June 2, 1896; P. L., p. 392.

#### IV. REORGANIZATION OF CORPORATIONS.

Sec. 1. Property and franchises of certain corporations sold by order of court, to be vested in purchasers; purchasers to become new corporation.

2. Purchasers to meet and organize new corporation.

3. To adopt name and seal and fix capital stock.

4. May issue preferred stock.

5. May borrow money and provide for repayment.

6. Not to plead statute against usury.

7. Certificate to be filed in office of secretary of State.

Property and franchises of certain corporations sold by order of court to be vested in purchasers; purchasers to become a new corporation.

Section 1. Whenever the property and franchises of any corporation created by or under any law or laws of this State, except

steam-railroad, canal, turnpike or plank-road companies, shall be sold and conveyed under or by virtue of any decree or decrees of the court of chancery of this State or of the circuit court of the United States in and for the district of New Jersey, sitting in equity, and an execution or executions issued thereon, to satisfy any mortgage debt or debts, judgment or judgments, or other incumbrance or incumbrances thereon, such sale and conveyance, duly made and executed, shall vest in the purchaser or purchasers thereof all the right, title, interest, property, possession, claim and demand, in law and equity, of the parties to the suit or suits, action or actions, in which such decree or decrees was or were made, of, in and to the said property so sold with its appurtenances; and also of, in and to the corporate rights, liberties, privileges and franchises of the said corporation, but subject to all the conditions, limitations, restrictions



## Reorganization — Act of April 16, 1897, §§ 2-7.

and penalties of the said corporation of and concerning the same; and such purchaser or purchasers, and his or their associates, not less than three in number, shall thereupon become a new body politic and corporate in fact and in law, by such name as said persons shall select, and shall be deemed and considered the stockholders of the capital stock of such new body politic and corporate, in the ratio and according to the amount of the purchase money by them respectively contributed; and shall be entitled to all the rights, liberties, privileges and franchises, and be subject to all conditions, limitations, restrictions and penalties of and concerning the said corporation whose property and franchises shall have been so sold and conveyed, which were contained in the act or acts creating, or under which the aforesaid corporation was created, and the supplements thereto, so far as the same was or were in force and unrepealed at the time of such sale and conveyance.

An act concerning the sale of the property and franchises of any corporation created by or under any law or laws of this State, except steam railroad, canal, turnpike or plank-road companies. Approved April 16, 1897; P. L. 1897, p. 229, § 1.

#### **Purchasers to meet and organize new corporation.**

§ 2. The persons for or on whose account any such property and franchises may have been purchased shall meet within thirty days after the conveyance made by virtue of said process or decree shall have been delivered, at the county, town or the county wherein said sale may have been made, written notice of the time and place of said meeting having been given to each of said several persons at least ten days before said meeting, and organize said new corporation by electing a president and board of directors to continue in office until the first Monday of May succeeding such meeting, when, and annually thereafter on the said day, a like election for a president and directors shall be held to serve for one year.

Id., § 2.

#### **To adopt name and seal and fix capital stock.**

§ 3. At such meeting so held, the said person shall adopt a corporate name and corporate seal, determine the amount of the capital stock of said corporation, and shall have power and authority to make and issue certificates of stock in shares of fifty dollars each.

Id., § 3.

#### **May issue preferred stock.**

§ 4. The said corporation may then, or at any time thereafter, create and issue preferred stock to such an amount and at such time as they may deem necessary.

Id., § 4.

#### **May borrow money and provide for repayment.**

§ 5. Any corporation created under this act may borrow from time to time such sum or sums of money as may be necessary for the accomplishment of the object of such corporation, not exceeding at any one time the total amount of the authorized capital stock of such corporation, or any increase thereof, and to secure the repayment thereof, or of any part or portion thereof, may issue bonds registered or with coupons or interest certificates thereto attached, or both, secured by a mortgage of any or all of its franchises, real estate or personal property, including stocks and securities of such corporation or of any other corporation whose stocks or securities it owns, which mortgage may be recorded as mortgages of real estate are or hereafter may be by law required to be recorded in the office of the clerk or register of deeds of the county or counties in which the property of said corporation described in said mortgage may be located, and in the office of the clerk or register of deeds of the county in which the principal office of such corporation is situate, and such record or the lodgment of such mortgage in such clerk's or register's office for record shall have the same force, operation and effect as to all judgment creditors, purchasers or mortgages in good faith, as the record or lodgment for that purpose of mortgages of real estate now have, although such mortgage may not have been executed, proved or recorded as a chattel mortgage.

Id., § 5.

#### **Not to plead statute against usury.**

§ 6. No corporation or corporations issuing bonds under the provisions of this act shall plead any statute or statutes against usury in any court of law or equity in any suit instituted to enforce the payment of such bonds or mortgages.

Id., § 6.

#### **Certificate to be filed in office of secretary of State.**

§ 7. It shall be the duty of such new corporation, within one month after its organization, to make a certificate thereof, under its common seal, attested by the signature of its president, specifying the date of such organization, the name so adopted, the amount of capital stock, and the name of its president and directors, and transmit the said certificate to the secretary of State, at Trenton, to be filed in his office and there remain of record; and a certified copy of such certificate so filed shall be evidence of the corporate existence of said new corporation; Provided, That nothing contained in this act shall divest or in any manner impair the lien of any prior mortgage or other incumbrance upon the property or franchises, conveyed under the sale of said property or

## Penal provisions — Penal Code, §§ 154-157.

franchise, when by the terms of the process or decree under which the sale has been made, or by operation of law, the said sale is made subject to the lien of any such prior mortgage or other incumbrance; And provided, That no such sale and conveyance or organization of such new corporation shall in any wise affect or impair any right or rights in law or equity of any person or persons, body politic or corporate, not a party or parties to the suit or suits, action or actions, in which the aforesaid decree or decrees was

or were made, nor of the said party or parties, except so far forth\* as determined by said decree or decrees; And provided also, That when any trustee or trustees shall be made a party or parties to such suit or suits, action or actions, and their cestuis que trust, for any reason or reasons satisfactory to the court in which suit or suits, action or actions, may be, shall not be made a party or parties thereto, the rights and interests of such cestuis que trust shall be concluded by such decree or decrees.

## V. PENAL PROVISIONS RESPECTING CORPORATIONS.

AN ACT for the prevention of crimes.

Sec. 154. Fraudulent appropriation of corporate property by directors.

155. Fraudulent accounts by directors.

156. Willful destruction or alteration of corporate books.

157. Fraudulent statements by directors and officers.

158. Directors or officers of corporations, when not excused from testifying.

159. Remedy at law or equity not to be affected.

160. Issuing false stock.

Fraudulent appropriation of corporate property by directors.

§ 154. That whosoever being a director, member or public officer of any body corporate or public company, shall fraudulently take or apply for his own use or benefit, or for any use or purpose other than the use or purpose of such body corporate or public company, any of the property of such body corporate or public company shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to imprisonment at hard labor for three years, or to fine not exceeding five hundred dollars.

An act for the prevention of crimes. Revision of 1874, § 154. See Gen. Stat., p. 1077.

Fraudulent accounts by directors.

§ 155. That whosoever being a director, public officer, or manager of any body corporate, or public company, shall as such receive or possess himself of any of the property of such body corporate or public company, otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make, or to cause or direct to be made a full and true entry thereof in the books and accounts of such body corporate or public company, shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to imprisonment at hard labor not to exceed three years, or to fine not exceeding five hundred dollars, or both.

An act for the prevention of crimes. Revision of 1874, § 155. See Gen. Stat., p. 1077.

Willful destruction or alteration of corporate books.

§ 156. That whosoever, being a director, manager, public officer, or member of any body corporate, or public company, shall, with intent to defraud, destroy, alter, mutilate or falsify any book, paper, writing or valuable security belonging to the said body corporate or public company, or make or concur in the making of any false entry, or omit or concur in omitting any material particular, in any book of accounts or other document belonging thereto, shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to punishment by imprisonment at hard labor, not to exceed three years, or fine not exceeding five hundred dollars, or both.

An act for the prevention of crimes. Revision of 1874, § 156. See Gen. Stat., p. 1077.

Fraudulent statements by directors and officers.

§ 157. That whosoever being a director, manager, or public officer of any body corporate or public company, shall make, circulate or publish, or concur in making, circulating or publishing, any written statement or account which he shall know to be false, in any material particular, with intent to deceive or defraud any member, shareholder or creditor, of any such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof, shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to imprisonment at hard labor, not to exceed two years, or fine not exceeding four hundred dollars, or both.

An act for the prevention of crimes. Revision of 1874, § 157. See Gen. Stat., p. 1078.

\* So in original.

Penal provisions; criminal proceedings — Penal Code, §§ 158, 159, 189.

**Directors or officers of corporations; when not excused from testifying.**

§ 158. That nothing in any of the last three preceding sections of this act contained shall enable or entitle any person to refuse to make a full and complete discovery by answer to any bill in equity, or to answer any question or interrogatory in any civil proceeding in any court, or upon the hearing of any matters in insolvency; and no person shall be liable to be convicted of any of the misdemeanors in any of the said sections mentioned by any evidence whatever in respect of any act done by him, if he shall at any time previously to his being charged with such offense have first disclosed such act on oath, in consequence of any compulsory process of any court of law or equity in any action, suit or proceeding which shall have been bona fide instituted by any party aggrieved, or if he shall have first disclosed the same in any compulsory examination or deposition before any court upon the hearing of any matter in insolvency.

An act for the prevention of crimes. Revision of 1874, § 158. See Gen. Stat., p. 1078.

**Remedy at law or equity not to be affected.**

§ 159. That nothing in any of the sections of this act contained in the last preceding sections mentioned, nor any proceedings, conviction, or judgment to be had or taken thereon against any person under any of the said sections, shall prevent, lessen, or impeach any remedy at law or in equity which any party aggrieved by any offense against any of the said sections, might have had if this act had not been passed; but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him; and nothing in the said sections contained shall affect or prejudice any agreement entered into or security given by any trustee, having for its object the restoration or repayment of any trust property misappropriated.

An act for the prevention of crimes. Revision of 1874, § 159. See Gen. Stat., p. 1078.

**Issuing false stock.**

§ 180. That every president, vice-president, director, cashier, treasurer, secretary or other officer, and every agent of any bank, insurance company, railroad company, manufacturing company, or of any other corporation, who shall wilfully and designedly sign, with intent to issue, transfer, sell or pledge, or cause to be issued, transferred, sold or pledged, any false, fraudulent or simulated certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation, or who shall wilfully and designedly sign, with intent to issue, transfer, sell or pledge, or to cause to be issued, transferred, sold or pledged, any certificate or other evidence of the ownership or transfer of any share or shares in such corporation, or any instrument purporting to be a certificate or other evidence of such ownership or transfer, the signing, issuing, transferring, selling or pledging of which, by such president, vice-president, director, cashier, treasurer, secretary or other officer or agent, shall not be authorized by the charter and by-laws of such corporation, or by some amendment thereof, and every such president, vice-president, director, cashier, treasurer, secretary or other officer or agent who shall wilfully, designedly and fraudulently issue, transfer, sell or pledge any such certificate or other evidence, or any such instrument as aforesaid, with intent to prejudice, injure, damage or defraud any person, body politic or corporate, shall be deemed guilty of a high misdemeanor, and on conviction thereof, shall be punished by fine not exceeding three thousand dollars, or imprisonment at hard labor for any term not exceeding ten years, or both.

An act for the prevention of crimes. Revision of 1874, § 180. See Gen. Stat., p. 1083.

## VI. CRIMINAL PROCEEDINGS AGAINST CORPORATIONS.

**AN ACT** regulating criminal proceedings in criminal cases.

Sec. 79. Summons on indictment against corporations, how issued and served.

80. Proceedings after return "served" or "summoned."

81. Proceedings when process cannot be served.

**Summons on indictment against corporations; how issued and served.**

§ 79. That when any indictment shall be found, or information filed by the attorney-general, against any corporation or township, in any of the courts of law of this State, it shall and may be lawful for the attorney-

general or prosecuting attorney for the State to cause a summons or notice to be directed to the said corporation or township, in its corporate name, commanding or notifying the said corporation or township to appear at the said court, to answer to such indictment or information, a copy of which summons or notice shall be served on the president, or other head officer of the said corporation, or clerk of said township, or left at his dwelling-house or usual place of abode, at least six entire days before the time at which the said corporation are by said summons or notice required to appear; and in case the president or other head officer of the corporation cannot be found in the county in which such indictment shall



have been presented or information filed, to be served with a copy of said summons or notice as aforesaid, and has no dwelling-house or usual place of abode within the said county, then a copy of said summons or notice may be served on the clerk, cashier or secretary of said corporation or township, if any there be in the said county in which the said indictment shall have been found or information filed, and if there be no clerk, cashier, or secretary of said corporation or township found in said county, then on one of the directors of the said corporation, or left at his usual place of abode six entire days before the commencement of the said term to which the said summons or notice shall be returnable.

An act regulating criminal proceedings in criminal cases. Revision of 1874, § 79. See Gen. Stat., p. 1136.

#### Proceedings after return "served" or "summoned."

§ 80. That when the sheriff or other officer shall return such summons or notice "summoned" or "served," the said corporation or township shall be considered as in court, and as appearing to said indictment or information; and the court shall order the clerk to enter an appearance for said corporation or township, and indorse the plea of not guilty on said indictment or information, and further proceedings may then be had thereon, in the same manner as if the said corporation or township had appeared and pleaded not guilty thereto; and if the said corporation or township shall be convicted on said indictment or information, the said court may proceed to pass judgment thereon, and cause process of execution to be issued to the sheriff of the county against the goods and chattels or lands and tenements of the said corporation or township, for the amount of the fine and cost which may be awarded against them, in the same manner as on a judgment in a civil action; and the said sheriff shall proceed to sell the goods and chattels or lands and tenements of the said corporation or township on the

said execution, in the same manner as on an execution issuing against a corporation in a civil suit.

An act regulating criminal proceedings in criminal cases. Revision of 1874, § 80. See Gen. Stat., p. 1137.

#### Proceedings when process cannot be served.

§ 81. That in case the sheriff or other officer shall return such summons or notice "not summoned" or "not served," and an affidavit shall be made to the satisfaction of the court, that the same could not be served as heretofore mentioned in this act, or in case the sheriff or other officer shall make affidavit that he hath made diligent inquiry, and cannot ascertain the name of any president, secretary, or director of said corporation, resident in the county in which the said indictment shall have been found or information filed, then the court shall make an order directing the said corporation to cause their appearance to be entered, and to plead to said indictment or information on or before the first day of the next term of the said court, a copy of which order shall, within twenty days, be inserted in such one of the public newspapers printed in this State, as the court may direct, for at least six weeks; and if the said corporation shall not appear within the time limited by such order, or within such further time as the court shall appoint, then on proof made of the publication of such order, in manner aforesaid, the court being satisfied of the truth thereof, shall order the clerk to enter an appearance for said corporation, and indorse a plea of not guilty on said indictment or information, and thereupon further proceedings may be had on the said indictment or information, in the manner as if the said corporation had appeared and pleaded not guilty thereto; and in case of conviction execution may be issued against said corporation, and proceedings had thereon, as in the preceding section mentioned.

An act regulating criminal proceedings in criminal cases. Revision of 1874, § 81. See Gen. Stat., p. 1137.

## VII. SHARES OF STOCKHOLDERS SOLD ON EXECUTION.

### AN ACT respecting any execution.

Sec. 4. Stock of corporations may be sold under execution.

5. Clerk, cashier or other officer to give certificate of shares held by defendant.
6. Proceedings when clerk, cashier or other officer is a non-resident.
7. Non-resident clerk, cashier or other officer to return certificate.

Stock of corporations may be sold under execution.

§ 4. That \* \* \* any share or interest in any bank, insurance company or other

joint-stock company, that is or may be incorporated under the authority of this State, or incorporated or established under the authority of the United States, belonging to the defendant in execution, may be taken and sold by virtue of such execution, in the same manner as goods and chattels.

An act respecting any execution. Approved March 27, 1874. See Gen. Stat., p. 1415, § 4.

[Shares of stock in a bank or other incorporated company are not bound by the delivery of a *fi. fa.* to the sheriff against their owner, but may

## Execution; quo warranto — Act of March 27, 1874, §§ 5-7.

be transferred before an actual levy. *Princeton Bank v. Croser*, 22 N. J. L. R. 383.]

**Clerk, cashier or other officer to give certificate of shares held by defendant.**

§ 5. That the clerk, cashier, or other officer of such company, who has at the time the custody of the books of the company, shall upon exhibiting to him the writ of execution, give to the officer having such writ a certificate of the number of shares or amount of interest held by the defendant in such company; and if he shall neglect or refuse so to do, or if he shall wilfully give a false certificate thereof, he shall be liable to the plaintiff for double the amount of all damages occasioned by such neglect or false certificate, to be recovered in an action on the case against him.

An act respecting any execution. Approved March 27, 1874. See Gen. Stat., p. 1415, § 5.

**Proceedings when clerk, cashier or other officer is a non-resident.**

§ 6. That when the clerk, cashier, or other officer of any joint-stock company that is or hereafter may be incorporated under the authority of this State, who has the custody of the books of registry of the stock thereof, shall be non-resident in this State, it shall be the duty of the sheriff or other officer, receiving a writ of execution issued out of any court of this State against the goods and chattels of a defendant in execution holding stock in such company, to send by mail a notice in writing, directed to such non-resident clerk, cashier or other officer, at the post-office nearest his reputed place of residence, stating in such notice that he, the said sheriff or other officer, holds such writ of execution, and out of what court, at whose suit, for what amount, and against whose goods and chattels, such writ has been issued, and that by virtue of said writ, he, the said sheriff or other officer, seizes and levies upon all the shares of the stock of such company held by the defendant in execution on the day of the date of such written notice; and it shall also be the duty of such sheriff or other officer, on the day of mailing such notice, as aforesaid, to affix and set up upon any office or place of business of such company within his county, a like

notice in writing, and on the same day to serve like notice in writing upon the president and directors of said company, or upon such of them as reside in his county, either personally or by leaving the same at their respective places of abode; and the sending, setting up, and serving of such notices in the manner aforesaid, shall constitute such levy taken, a valid levy of such writ upon all shares of stock in such company, held by the defendant in execution, which have not at the time of the receipt of such notice by the said clerk, cashier or other officer, who has custody of the books of registry of the stocks thereof, been actually transferred by the defendant; and thereafter any transfer or sale of such shares by the defendant in execution, shall be void as against the plaintiff in said execution, or any purchaser of such stock at any sale thereunder.

An act respecting any execution. Approved March 27, 1874. See Gen. Stat., p. 1415, § 6.

**Non-resident clerk, cashier or other officer to return certificate.**

§ 7. If the non-resident clerk, cashier, or other officer in such company, to whom notice in writing is sent, as prescribed in the preceding section, shall thereupon send forthwith, by mail or otherwise, to the officer having such writ, a statement of the time when he received such notice, and a certificate of the number of shares held by the defendant in such company at the time of the receipt by him of such notice, not actually transferred on the books of said company; and the said sheriff or other officer shall on receipt by him of such certificate, insert the number of such shares in the inventory attached to said writ; and if such clerk, cashier, or other officer in such company, neglect to send such certificate, as aforesaid, or if he shall wilfully send a false certificate, he shall be liable to the plaintiff for double the amount of all damages occasioned by such neglect or false certificate to be recovered in an action on the case against him; but the neglect to send, or mis-carriage of such certificate, shall not impair the validity of the levy upon the stock.

An act respecting any execution. Approved March 27, 1874. See Gen. Stat., p. 1416, § 7.

## VIII. QUO WARRANTO PROCEEDINGS.

- Sec. 1. How information may be exhibited against intruder into office.
2. Of the judgment and costs.
3. Court to allow parties a reasonable time to plead.
4. Proceedings against persons unlawfully holding or executing municipal office or franchise.
5. Relator to give bond to defendant.
6. When information and bond filed, rule to plead may be entered; rule, how served.

- Sec. 7. When appearance of defendant to be entered and pleadings filed; affidavit to be annexed to plea.
8. When party shall join in demurrer; when to be heard.
9. What sufficient notice of hearing.
10. Court always open for return of writs, etc.
11. Upon judgment of ouster, relator may have immediate possession.
12. Court may determine title of respondent, or relator to office.

Quo warranto — Act of March 17, 1795; Supplement of May 9, 1894.

**How information may be exhibited against intruder into office.**

Section 1. That in case any person or persons shall usurp, intrude into, or unlawfully hold or execute any office or franchise within this State, it shall and may be lawful to and for the attorney-general, with the leave of the supreme court, to exhibit one or more information or informations in the nature of quo warranto, at the relation of any person or persons, desiring to sue or prosecute the same, who shall be mentioned in such information or informations to be the relator or relators against such person or persons, for usurping, intruding into, or unlawfully holding and executing any such office or franchise, and to proceed therein in such manner as is usual in cases of informations in the nature of a quo warranto; and if it shall appear to the said supreme court that the several rights of divers persons to the same office or franchise may properly be determined on one information, it shall and may be lawful for the said court to give leave to exhibit one such information against several persons, in order to try their respective rights to such office or franchise; and such person or persons, against which such information or informations in nature of a quo warranto shall be sued or prosecuted, shall appear and plead as of the same term in which the said information or informations shall be filed, unless the said court shall give further time to such person or persons, against whom such information or informations shall be exhibited, to plead, and such person or persons as shall sue or prosecute such information or informations in nature of a quo warranto shall proceed thereupon with the most convenient speed that may be.

An act for rendering the proceedings upon information in the nature of quo warranto, more speedy and effectual. Approved March 17, 1795.

**Of the judgment and costs.**

§ 2. That in case any person or persons, against whom any information or informations in the nature of a quo warranto shall in any of the said cases, be exhibited in the said supreme court, shall be found or adjudged guilty of an usurpation or intrusion into, or unlawfully holding and executing any such office or franchise, it shall and may be lawful to and for the said court, as well to give judgment of ouster against such person or persons of and from such office or franchise, as to fine such person or persons respectively for his or their usurping, intruding into, or unlawfully holding and executing any such office or franchise; and also it shall and may be lawful to and for the said supreme court to give judgment, that the relator or relators, in such information named, shall recover his or their costs of such prosecution; and if judgment shall be given for the defendant

or defendants in such information, he or they, for whom such judgment shall be given, shall recover his or their costs therein expended against such relator or relators, such costs to be levied by fieri facias, or capias ad satisfaciendum, as in other cases.

Id., § 2.

**Court to allow parties a reasonable time to plead.**

§ 3. That it shall and may be lawful to and for the said supreme court to allow to such person or persons respectively, against whom any information in the nature of a quo warranto in any of the cases aforesaid shall be sued or prosecuted, or to the person or persons who shall sue or prosecute the same, such convenient time respectively to plead, reply, rejoin or demur as to the said court shall seem just and reasonable.

Id., § 3.

**Proceedings against persons unlawfully holding or executing municipal office or franchise.**

§ 4. That whenever it is alleged that any person or persons usurp, intrude into or unlawfully hold or execute any municipal office or franchise within this State, it shall and may be lawful to and for any citizen of this State, who believes himself lawfully entitled to such office or franchise, to file in the office of the clerk of the supreme court an information, or informations, in the nature of a quo warranto, at the relation of the said citizen, and who shall be mentioned in such information to be the relator, against such person or persons as defendant or defendants, for usurping, intruding into or unlawfully holding or executing any such office or franchise, and to proceed therein in such manner as is usual in cases of informations in the nature of a quo warranto, except as is otherwise provided for in this act.

Supplement of May 9, 1894, § 1.

**Relator to give bond to defendant.**

§ 5. That upon the filing of such information the relator or relators shall execute a bond to the defendant or defendants in the penal sum of one hundred and fifty dollars, with one or more sufficient surety or sureties, being freeholders and residents in this State, with condition to prosecute said action with effect, and to pay costs to the defendants if they shall be entitled thereto; which bond shall be approved by a justice of the supreme court, or supreme court commissioner, and filed in the office of the clerk of the supreme court.

Id., § 2.

**When information and bond filed; rule to plead may be entered; rule, how served.**

§ 6. That upon filing said information and bond as aforesaid, at request of the attorney



## Quo warranto — Supplement of May 9, 1894, §§ 3-7.

of relator, the clerk of said court shall enter as of course a rule on the defendant or defendants to plead or demur to said information within ten days after service upon him or them of a certified copy of such information and rule; such service shall be made upon each defendant, either personally, if he shall be found, or if not found, by leaving said copies of the information and rule at the house or place of abode of the defendant, in the presence of some person of the family of the age of fourteen years, who shall be informed of the contents thereof; proof of said service shall be made by the affidavit of the person making the service of the time, and manner of said service, which affidavit shall be filed with the clerk of said court.

Id., § 3.

**When appearance of defendant to be entered and pleadings filed; affidavit to be annexed to plea.**

§ 7. That the defendant or defendants, within ten days after service of said information and rule as aforesaid, shall enter an appearance to said action, (unless a justice of the supreme court, upon proper evidence of a reasonable cause therefor, shall grant further time, which, in case there has been personal service, shall not exceed ten days without consent of the relator) shall file his plea or demurrer to said information, and in default thereof judgment by default shall be entered against him or them; if a plea shall be filed it shall have annexed to it an affidavit by each defendant, stating the facts, matters and things set forth in said plea, so far as they relate to his own acts, are true, and so far as they relate to the acts of others, he believes them to be true, and also stating that said plea is not filed for the purpose of delay, and that he believes he has a legal defense to said action on the merits of the case; if further pleadings shall be necessary they shall be filed within ten days, each after the other, or within five days after service of a certified copy upon the opposite party or his attorney, unless a justice of the supreme court shall, under special circumstances, grant further time as aforesaid; and thereupon such further proceedings shall be had as are required by law.

Id., § 4.

**When party shall join in demurrer; when to be heard.**

§ 8. That when a demurrer shall be filed by either party, the other party shall join in demurrer within ten days, unless a justice of the supreme court shall grant further time as aforesaid; that whenever there shall be a joinder in demurrer the same shall be placed at once upon the calendar of the supreme court of the term in which issue is

joined, for an immediate hearing, as soon as it is possible for the court to attend to the same; if not heard at the term in which issue is joined, said cause shall be placed by the clerk on the calendar of the succeeding term of said court, and shall be brought to a hearing at that term, upon ten days' notice by either party to the other.

Id., § 5.

**What sufficient notice of hearing.**

§ 9. That whenever notice is required, two days' notice of the hearing, argument or trial of any motion or issue arising under this act shall be sufficient.

Id., § 6.

**Court always open for return of writs, etc.**

§ 10. That the supreme court shall always be open, except on Sunday, for the return of all writs and process in proceedings under this act.

Id., § 7.

**Upon judgment of ouster, relator may have immediate possession.**

§ 11. That hereafter any relator or relators, upon the entry of judgment of ouster in the supreme court in respect to any office or franchise within this State, upon any proceedings upon information in the nature of a quo warranto wherein such relator or relators shall theretofore have had judgment of ouster in said court, shall be entitled at once upon the entry thereof to enter, possess and enjoy the office in respect to which the said proceedings, whereon the said judgment may be founded, were or shall be taken; and that the said court or any judge thereof may upon the entry of such judgment, thereupon make an order on any defendant in such proceedings requiring him immediately to surrender any such office or franchise, with all the books, papers and insignia thereof, to the relator or relators; and no writ of error or other proceedings shall in anywise affect the right of such relator or relators to immediate entry into such office or franchise; Provided, That such relator or relators shall, upon his or their entry into such office or franchise, give bond to the defendant or defendants in such sum and with such surety or sureties as the supreme court or any judge thereof shall approve, conditioned for the repayment to the defendant of the emoluments of the office or franchise during such relator's incumbency therein to which such defendants may be adjudged to be entitled, as well as the costs of the defendant, in the event of the subsequent reversal of the judgment of ouster in the said proceedings.

Supplement of March 19, 1895.

## Miscellaneous acts.

**Court may determine title of respondent or relator to office.**

§ 12. That in all actions of quo warranto, the supreme court may, if the writ, return and pleadings are properly framed for the purpose, determine by its judgment, not only the title of the respondent to the office

or franchise in question, but also the title of the relator or relators to the same office or franchise, and shall have power, by appropriate process or orders, to enforce its said judgment.

An act in relation to the writ of quo warranto. Approved February 18, 1895.

## IX. MISCELLANEOUS ACTS CONCERNING CORPORATIONS.

**Sec. 1. Certain words not to be part of name of corporation.**

2. Certain acknowledgments of deeds by corporations validated.
3. Expense of investigating corporations delinquent in making returns.
4. Annual reports to commissioner of banking and insurance.
5. Payment of wages by certain corporations every two weeks.

**Certain words not to be part of name of corporation.**

Section 1. No corporation shall hereafter be organized under the provisions of "An act concerning corporations" (Revision of 1896), approved April twenty-first, one thousand eight hundred and ninety-six, or any amendment thereof or supplement thereto, with the words "insurance" or "safe deposit" or "trust company" or "bank" as a part of its name, and no certificate of incorporation shall be hereafter received for filing or record or be filed or recorded in any office in this State for the purpose of effectuating its incorporation.

§ 2. No corporation heretofore organized or doing business under the aforesaid act shall, by change or amendment of its name, use the words "insurance" or "safe deposit" or "trust company" or "bank" or any of them as part of its name, and no certificate of change or amendment shall be hereafter received for filing or record or be filed or recorded in any office in this State for the purpose of effectuating such change.

§ 3. Nothing herein contained shall, however, be construed to apply to or affect the name of any corporation whose certificate of incorporation has heretofore been filed with the secretary of this State.

Supplement of April 23, 1897; P. L., p. 274.

**Certain acknowledgments of deeds by corporations validated.**

§ 2. That the acknowledgments and records of any and all deeds of conveyances of land, tenements and real estate situate within this State heretofore made, executed and delivered by any corporation organized under the laws of this State, and having for its object the purchase, improvement or sale of lands, but which deeds have been acknowl-

edged by an officer of the grantor corporation instead of having been proved by a subscribing witness thereto, be and the same are hereby declared as good, valid and effectual as if the same had been duly proved; Provided, Said deed or deeds shall have been recorded in the clerk's or register's office of the county wherein such lands are situated, for five years last past.

An act to cure defective acknowledgment of conveyances by corporations. Approved March 11, 1885.

**Expense of investigating corporations delinquent in making returns.**

§ 3. On the neglect or refusal of a corporation incorporated under the laws of this State or doing business therein, to furnish the information prescribed by law to any State official required to publish a report on the standing and condition of such corporation, the expenses of the investigation authorized to be made because of such neglect or refusal shall be borne by said delinquent corporation and may be recovered therefrom in an action of debt in any court of competent jurisdiction in this State by the person authorized to make such investigation.

An act relative to the expense of investigating corporations delinquent in making returns. Approved April 21, 1896.

**Annual reports to commissioner of banking and insurance.**

§ 4. All domestic and foreign corporations, and societies and all resident and non-resident firms and individuals, now required by law to make annual reports to the commissioner of banking and insurance of this State, shall hereafter file such annual reports with said commissioner on or before the thirty-first day of January in each year; and that the commissioner of banking and insurance of this State, shall make report as of the thirty-first day of December of each year and present the same in writing to the governor at the earliest practicable day after the termination of the time limited for filing annual reports with him.

An act regulating the time within which annual reports shall be filed with the commissioner

## Miscellaneous acts.

of banking and insurance and regulating the annual report to be made by such commissioner. Approved April 21, 1896.

**Payment of wages by certain corporations every two weeks.**

§ 5. (1) Every manufacturing, mining or quarrying and lumbering corporation, partnership, association and establishment in this State employing persons in the business of manufacturing, mining or quarrying, shall pay at least every two weeks, in lawful money of the United States, each and every employe engaged in its business, or other representatives, the full amount of wages due to such employes up to within twelve days of such payment; Provided, however, That if at any time of payment the employe shall be absent from his regular place of labor, and shall not receive his wages through a duly authorized representative, he shall be entitled to said payment at any time thereafter upon demand.

2. No assignment of future wages payable every two weeks, under the provisions of this act, shall be valid if made to the employer or employers from whom such wages are to become due, or to any person on behalf of such employer or employers, or if made or procured to be made to any person for the purpose of relieving such employer or employers from the obligation to pay weekly under the provisions of this act.

2. It shall not be legal for any such company or establishment, or the agent of any such company or establishment, to enter into or make any agreement with any employe for the payment of the wages of any such employe otherwise than as provided in section five of this act, except it be to pay such wages at shorter intervals than every two weeks, and that every agreement made in violation of this act be and the same is hereby declared to be null and void; And provided, That each and every one of such employes with whom any agreement, in violation of this act, shall be made by any such person, company, establishment or agent, shall have his or her action and right of

action against any such partnership, association, company or establishment for the full amount of such wages in any court of competent jurisdiction in this State.

4. Any employer or employers who may violate any of the provisions of this act shall be guilty of a misdemeanor, and shall be punished by a fine not exceeding two hundred dollars and not less than fifty dollars for each violation, to be paid to the people of the State, at the discretion of the court; Provided, That an action for such violation is commenced within thirty days from the date thereof.

5. The factory inspector of this State, and his deputies shall bring an action against any employer or employers who neglect to comply with the provisions of this act for a period of two weeks after having been notified in writing by said inspector or his deputies that such action will be brought; and it is hereby made the duty of the county prosecutors of the pleas to appear in behalf of such proceedings brought hereunder by the factory inspector or his deputies.

6. When any employer or employers against whom action is brought under this act fail to appear, after having been duly served with the process, the default shall be recorded, the allegations in the complaint taken to be true and judgment rendered accordingly.

7. When judgment is rendered upon any complaint for the violation of any of the provisions of this act the court may issue a warrant of distress to compel the payment of the penalty prescribed by law, together with costs.

8. The provisions of this act shall not apply to or affect any contract now existing or that shall hereafter be entered into between any manufacturing or corporation and employe or employes or any bona fide trades union or labor organization.

9. All acts and parts of acts inconsistent with the provisions of this act be and the same are hereby repealed.

An act to provide for the payment of wages every two weeks. Approved April 16, 1896.





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NEW YORK.

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# NEW YORK.

## CONSTITUTION OF NEW YORK—1894.

### PART I.

#### CONSTITUTIONAL PROVISIONS.

##### ARTICLE I.

- Sec. 6. Taking property for public use.  
7. Compensation for taking private property.

##### ARTICLE VII.

- Sec. 1. State credit not to be given.

##### ARTICLE VIII.

- Sec. 1. Corporations, formation of.  
2. Dues of corporations.  
3. Corporation, definition of term.  
9. Credit or money of the State not to be given.  
10. Counties, cities and towns not to give or loan credit.

##### ARTICLE I.

###### Taking property for public use.

§ 6. \* \* \* No person shall, etc. \* \* \* nor shall private property be taken for public use, without just compensation.

Property cannot be taken by act of legislature for a purpose not of a public nature. *Powers v. Bergen*, 6 N. Y. 358, 367; *Matter of City of Buffalo*, 46 N. Y. St. Rep. 81.

Lands owned by a private individual or corporation and devoted to use as a private cemetery may be condemned for public use. *Matter of Bd. of Street Opening*, 133 N. Y. 329.

A law depriving an owner of property of its beneficial use and free enjoyment or imposing restraints materially affecting the value, without legal process or compensation, is unconstitutional. *Forster v. Scott*, 136 N. Y. 577; 32 N. E. Rep. 976.

The owner of lands adjoining a navigable river in which tide ebbs and flows has no property in the land below high-water mark and is not entitled to compensation for the taking for a public use. *Gould v. Hudson R. R. Co.*, 6 N. Y. 522, distinguished in *Rumsey v. N. Y. & N. E. R. R. Co.*, 114 N. Y. 423, 429, and overruled in s. c., 133 N. Y. 79, 85.

Right to maintain a watercourse is "property" protected by the Constitution and cannot be impaired without compensation. *Arnold v. Hudson R. R. Co.*, 55 N. Y. 661.

The right to enjoy property free from smoke, gas, steam, cinders, etc., caused by the operation of an elevated road is properly within the constitutional meaning and cannot be taken without compensation. *Abendroth v. Manhattan Ry. Co.*, 19 Abb. N. C. 247.

The owner of gypsum in lands over which highway runs, who is not owner of land, is entitled to compensation. *People ex rel. v. Eldredge*, 3 Hun, 541.

A stream in which riparian owners have vested rights is private property and cannot be made a public highway by statute without compensation. *Morgan v. King*, 35 N. Y. 454.

Right to maintain a toll bridge is private property. *Matter of Hamilton Avenue*, 14 Barb. 405. But diminution of its value by opening a free bridge in a neighborhood is not a "taking" within the constitutional provision. *Id.*

Franchise of a street railroad is property and entitled to constitutional protection. *People v. O'Brien*, 111 N. Y. 1, 40; 18 N. E. Rep. 692.

The power to take private property for public use is inseparable from the sovereign power of the State, and the Constitution merely regulates it by requiring that just compensation be made to the owner. *Matter of Furman Street*, 17 Wend. 649.

The right to take for a public use may be delegated by the sovereignty. *Bloodgood v. The Mohawk & H. R. R. Co.*, 18 Wend. 59.

The statute granting a railroad corporation the right to take, need not specify the land to be taken, but can delegate to the corporation the right to choose. *Buffalo & N. Y. R. R. Co. v. Brainerd*, 9 N. Y. 100.

If use be public legislatures are sole judges as to whether benefit is such as to warrant delegation of power. *Matter of Townsend*, 39 N. Y. 171. And an act is not unconstitutional because the power is delegated to a foreign corporation. *Id.*

There must be a public use to authorize a taking. *In re Albany Street*, 11 Wend. 148; *In re John and Cherry Streets*, 19 id. 676; *Varick v. Smith*, 5 Paige, 137; *Cochran v. Van Sully*, 20 Wend. 365; *Bloodgood v. The Mohawk & Hudson R. R. Co.*, 18 id. 59; *Embury v. Connor*, 3 N. Y. 511.

Legislature may authorize a municipality to take for public use. *Heyward v. Mayor, etc.*, 7 N. Y. 314.

Taking land for a railroad is a public use. *Buffalo & N. Y. R. R. Co. v. Brainerd*, 9 N. Y. 100; *People v. Law*, 34 Barb. 494.

But under the provisions of the general railroad act a corporation can take only so much and such land as the proper execution of its corporate purposes requires and renders necessary. *Matter of South Beach R. R. Co.*, 119 N. Y. 141.

Construction of a street surface railroad in a city street is not such an infringement of the vested rights of an abutting owner as to require compensation. *Clark v. Rochester City & B. R. R. Co.*, 18 St. Rep. 903; citing *People v. Kerr*, 27 N. Y. 188; *Killing v. Forty-second St. R. R. Co.*, 50 id. 206; *Mahady v. Bushwick R. R. Co.*, 91 id. 148.

Use of street by electric light company is a public use to which street may be devoted and compensation is unnecessary. *People ex rel. v. Thompson*, 65 How. Pr. 407.

Laying of gas pipes to supply gas to cities and towns for lighting streets and public places is for a public use. *Bloomfield Gas Co. v. Richardson*, 63 Barb. 437.

Acts passed authorizing supply of water to city of Middletown for "public and private purposes" are constitutional. Words "and private purposes" are surplusage. *Matter of Middletown*, 82 N. Y. 196. See, also, *Stamford Water-Works Co. v. Stanley*, 39 Hun, 424.

Preservation of public health is a public purpose and act providing for drainage (L. 1869, ch. 688) is constitutional. *Matter of Ryers*, 72 N. Y. 1.

Provision in an act authorizing condemnation of land for park purposes that city may sell such lands when no longer necessary for park purposes does not render act unconstitutional as taking for a use not public. *Matter of City of Rochester*, 137 N. Y. 243.

The question whether the use is a public one is a judicial one, to be determined by the courts. *Matter of Deanville Cemetery*, 66 N. Y. 569; *Pocantico Water-Works Co. v. Bird*, 130 id. 249. The grant by the legislature of the right to take is not conclusive evidence that the use is a public one. *Id.*

A possible limited use by a few persons, and then not as a right, but by way of permission or favor, is not sufficient to authorize the taking of private property against the will of the owner. *Matter of the Split Rock Cable Road Co.*, 128 N. Y. 408.

The erection of an elevated railroad in a street, which will to some extent obscure the light of the abutting premises and depreciate their value, is a taking of such property, requiring compensation. *Story v. N. Y. El. R. R. Co.*, 90 N. Y. 123.

Where a highway is taken for railroad purposes compensation must be made to owners of fee. Trustees, etc., *v. Aub. & Roch. R. R. Co.*, 3 Hill, 567; *Fletcher v. Aub. & Syr. R. R. Co.*, 25 Wend. 462; *Bloodgood v. Mohawk & Hudson R. R. Co.*, 18 id. 9; *Brown v. Cayuga & Susq. R. R. Co.*, 12 N. Y. 486.

Occupancy and use of lands for purposes of constructing and maintaining ditches is such an interference with the proprietary interests of the owner as to entitle him to compensation for the taking. *People ex rel. v. Haines*, 49 N. Y. 587.

Act which invades ownership must provide for a certain definite and adequate source and manner of payment. *Matter of Mayor, etc., of New York*, 99 N. Y. 569; *Sage v. City of Brooklyn*, 89 id. 189; *Kelly v. Mayor, etc., of New York*, 6 Misc. Rep. 516.

Compensation need not be paid before appropriation of land. *Bloodgood v. Mohawk & Hudson R. R. Co.*, 18 Wend. 9.

It is sufficient if statute provides for securing the right of compensation; the actual making of such compensation is not a condition precedent. *Patten v. Elevated R. R. Co.*, 3 Abb. N. C. 306.

Provision in act providing for compensation one year after damages are appraised does not render act unconstitutional. *Allen v. Village of Northville*, 39 Hun, 240.

Payment of compensation may be deferred until it can be raised by tax. *Hammersly v. Mayor, etc.*, 56 N. Y. 533; *Chapman v. Gates*, 54 id. 132.

Act authorizing entry for preliminary survey for railroad before compensation is made constitutional, if it makes suitable provision for compensation in case land is subsequently taken. *Polly v. Sara. & Wash. R. R. Co.*, 9 Barb. 449.

Provisions of village charter for local special assessment, and not imposing a duty upon the village to pay for land taken are unconstitutional. *Matter of So. Market Street*, 67 Hun, 594.

The right to acquire property for public purposes and defer payment cannot be vested in a private corporation. *Dusenbury v. Mutual Tele. Co.*, 11 Abb. N. C. 440.

Act of legislature (L. 1853, ch. 62) authorizing highways to be laid across railroad tracks is not taking property without compensation. *Albany Nor. R. R. Co. v. Brownell*, 24 N. Y. 345.

After judgment has been rendered in an action, the fruits thereof are rights of property, and an act of legislature (§ 1440, Code Civ. Pro.) nullifying such judgment, is unconstitutional. *Gilman v. Tucker*, 128 N. Y. 190; 28 N. E. Rep. 1040.

Municipal corporation may pass ordinance compelling removal of snow and ice, and penalty for failure is not depriving of property without compensation. *Village of Carthage v. Frederick*, 122 N. Y. 268; 25 N. E. Rep. 480.

As to distinction between taxation and taking private property without compensation. *People ex rel. v. Mayor of Brooklyn*, 4 N. Y. 419; *Sun Mutual Ins. Co. v. Mayor, etc.*, 8 id. 241; *Brewster v. City of Syracuse*, 19 id. 116.

An assessment for benefit to pay the expense of a local improvement falls within legitimate use of taxing power. *Stryker v. Kelly*, 7 Hill, 9; *People ex rel. v. Lawrence*, 41 N. Y. 123, 137.

Act authorizing town to raise money by taxation for purchase of stock of railroad company is for a public improvement and is in no sense depriving a resident of his property without compensation. *Grant v. Courter*, 24 Barb. 232; *Bank of Rome v. Rome*, 18 N. Y. 38.

Assessments for repaving streets, a species of



## Constitution — Art. i, § 7; Art. viii, § 1.

taxation not covered by the constitutional prohibition. *Moran v. City of Troy*, 9 Hun, 540.

Legislature may impose a local tax for construction of canal. *Thomas v. Leland*, 24 Wend. 65.

Confirmation of an irregular and invalid assessment is not taking private property without compensation. *Mann v. City of Utica*, 44 How. Pr. 334.

A law authorizing assessments without reference to benefits would be unconstitutional as taking private property without compensation. *Stuart v. Palmer*, 74 N. Y. 183.

Nuisances may be abated by act of legislature without violating the provisions of the Constitution. *Coe v. Shultz*, 47 Barb. 65; *Kelly v. Mayor*, etc., of N. Y., 6 Misc. Rep. 516.

This constitutional protection may be waived by the owner. *Embury v. Conner*, 3 N. Y. 511; *People v. Turner*, 117 id. 227; 22 N. E. Rep. 1022; *Matter of Hand Street*, 55 Hun, 132.

And the constitutional objection can only be raised by the owner. *People v. Turner*, 117 N. Y. 227; 22 N. E. Rep. 1022; *Waterloo Woolen Mfg. Co. v. Shanahan*, 128 N. Y. 345; 28 N. E. Rep. 258.

The question of just compensation is judicial in its nature and must be conducted in a court having jurisdiction over the subject-matter. In re *City of Buffalo*, 139 N. Y. 422; 34 N. E. Rep. 1103.

### Compensation for taking private property.

§ 7. When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. \* \* \*

The jury referred to in this section means a jury drawn in the ordinary way, but a majority of them may render a decision. *Cruger v. Hudson R. R. Co.*, 12 N. Y. 190.

This section intends that one jury or one commission conducted in a proper manner is to determine finally the rights of the parties where land is taken for a public use. *Schnelder v. City of Rochester*, 8 Misc. Rep. 652.

A statute authorizing the common council to appoint assessors to determine the damages is unconstitutional. *House v. City of Rochester*, 15 Barb. 517; *Clark v. City of Utica*, 18 id. 451.

This section is not a restriction upon the legislative power to provide for a reassessment of damages, by a jury, after they have been once assessed by commissioners. *Clark v. Miller*, 54 N. Y. 528.

The constitutional provision as to the manner of ascertaining the compensation to be paid for private property when taken for public use, may be waived by the owner. *Matter of Hand Street*, 55 Hun, 132; *Baker v. Braman*, 6 Hill, 47; *Matter of Village of Middleton*, 82 N. Y. 196; *Embury v. Conner*, 3 id. 511; *Sherman v. McKeon*, 38 id. 266; *Menges v. City of Albany*, 56 id. 374.

This section does not apply to a case where property is taken by the State for canal purposes.

*Waterloo Woolen Mfg. Co. v. Shanahan*, 128 N. Y. 345.

A statute that provides that on an appeal from an award of commissioners the court may increase or diminish the amount of compensation to landowners, is unconstitutional under this section. *Matter of Malone Water-Works Co.*, 38 N. Y. St. Rep. 95.

## ARTICLE VII.

### State credit not to be given.

Section 1. The credit of the State shall not in any manner be given or loaned to or in aid of any individual, association or corporation.

## ARTICLE VIII.

### Corporations, formation of.

Section 1. Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed.

The provision of this section is permissive not mandatory. *Matter of Taxpayers of Kingston*, 40 How. Pr. 444.

An act reorganizing an old corporation is not within this section. *Mosher v. Hilton*, 15 Barb. 657. Nor an act remedying a technical defect in the organization. *Syracuse City Bank v. Davis*, 16 Barb. 188. Nor an act regulating an existing corporation. *Attorney-General v. North Am. Life Ins. Co.*, 82 N. Y. 172.

A special act for incorporation is not violative of this section by reason of the existence of a general law. Whether an act is necessary or not is in the discretion of the legislature. *People v. Bowen*, 21 N. Y. 517.

The legislature may by special act impose such conditions, restrictions and burdens upon railroad corporations as the public good requires. *People ex rel. v. Boston & Albany R. R. Co.*, 70 N. Y. 569.

The legislature may pass a special act requiring a railroad corporation organized under the general railroad act to pay a tax upon gross receipts instead of a license fee as before prescribed. Such act may be deemed an amendment of the charter of the company, and so within the power reserved to the legislature by this section. *Mayor v. Twenty-third Street R. R. Co.*, 113 N. Y. 311; 21 N. E. Rep. 60.

Under such reserved power the legislature cannot deprive a corporation of its property, or interfere with or annul its contract with third persons. *Id.*, citing *People v. O'Brien*, 111 N. Y. 1; 18 N. E. Rep. 692. See *People ex rel. Gage v. Lonnas*, 54 Hun, 604; *People v. O'Brien*, 111 N. Y. 2; 18 N. E. Rep. 692; *Booth v. R., W. & O. R. R. Co.*, 44 N. Y. St. Rep. 9, 11.

**Dues of corporations.**

§ 2. Dues from corporations shall be secured by such individual liability of the corporations and other means as may be prescribed by law.

This does not include "dues" to directors. *McDowall v. Sheehan*, 129 N. Y. 200.

**Corporation, definition of term.**

§ 3. The term corporations as used in this article shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.

The provision that corporations shall be subject to be sued in like cases as natural persons, is an enabling, and not a restricting one, and summary proceedings to enforce a liability are valid. *Matter of Empire City Bank*, 18 N. Y. 179.

This provision was intended to confer on corporations the capacity to be sued, not to define cases in which suits may be maintained against them. *Gray v. City of Brooklyn*, 10 Abb. (N. S.) 186; *Van Vranken v. City of Schenectady*, 31 Hun, 516.

A provision in a corporate charter that "all applications for injunctions" shall be made only to the Supreme Court is void, being a violation of this section. *Story v. N. Y. Elevated R. R. Co.*, 3 Abb. N. C. 478.

A statute requiring a notice before an action can be maintained against a municipal corporation because of personal injuries received from defective sidewalks, is constitutional. *Smith v. City of Rochester*, 46 N. Y. St. Rep. 727, citing *McNally v. City of Cohoes*, 127 N. Y. 350; 27 N. E. Rep. 1043.

As to liability of joint-stock associations to taxation under statutes taxing corporations, see *People ex rel. Platt v. Wemple*, 117 N. Y. 136; 22 N. E. Rep. 937; citing *Waterbury v. Merchants' Union Express Co.*, 50 Barb. 158; *Westcott v. Fargo*, 6 Lans. 319; *People ex rel. Winchester v. Coleman*, 133 N. Y. 279; 31 N. E. Rep. 96.

**Credit or money of the State not to be given.**

§ 9. Neither the credit nor the money of the State shall be given or loaned to or in aid of any association, corporation or private undertaking. This section shall not, however, prevent the legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper. Nor shall it apply to any fund or property now

held, or which may hereafter be held, by the State for educational purposes.

[This provision has reference to moneys raised by taxation throughout the State and paid out of the State treasury, and does not prevent the legislature from authorizing a board of supervisors to impose a tax for the relief of poor through the instrumentality of a charitable institution. *Shepherd's Fold v. Mayor*, etc., of New York, 96 N. Y. 137; *White v. The Inebriates' Home for Kings Co.*, 141 Id. 123; 35 N. E. Rep. 1092.]

**Counties, cities and towns not to give or loan money or credit.**

§ 10. No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in, or bonds of, any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes. This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor as may be authorized by law. \* \* \*

The caring for the poor of a city through the instrumentality of a private corporation is not prohibited by this section, and is not a gift of city money. *The Shepherd's Fold v. Mayor of N. Y.*, 96 N. Y. 137. And an act providing that a part of city excise money be paid to the use of an inebriate asylum for the care of the inebriates of a certain locality is making a provision for the support of the poor. *White v. The Inebriate Home for Kings Co.*, 141 N. Y. 123; 35 N. E. Rep. 1092.

The creation of a liability on towns for damages occasioned by defective highways and bridges is not a gift of the money or property of the towns to or in aid of an individual within the meaning of this section. *Bidwell v. Town of Murray*, 40 Hun, 190.

An act authorizing a town holding railroad bonds to exchange them for common stock in the same railroad is unconstitutional. *Town of Wheatland v. Taylor*, 29 Hun, 70.

The creation of a debt for the purchase of lands outside the city limits for a park, is for a "city purpose," and therefore valid. *Matter of Mayor*, etc., of New York, 99 N. Y. 569.

And the creation of a debt for the construction and operation of an electric light system by a city for its own and the use of its inhabitants is for a "city purpose." *Hequembourg v. City of Dunkirk*, 49 Hun, 550.

Municipalities have the right to compromise a claim which they dispute, but which in the end they deem wise and prudent to acknowledge in part. *Hillis v. Peekskill Savings Bank*, 101 N. Y. 490.

## PART II.

## THE GENERAL CORPORATION LAW, AS AMENDED TO JANUARY 1, 1899.

L. 1890, ch. 563.

An Act in relation to corporations, constituting chapter 35 of the general laws.

## CHAPTER XXXV OF THE GENERAL LAWS.

## The General Corporation Law.

- Sec. 1. Short title.  
 2. Classification of corporations.  
 3. Definitions.  
 4. Qualifications of incorporators.  
 5. Filing and recording certificates of incorporation.  
 6. Corporate names.  
 7. Amended and supplemental certificates.  
 8. Lost or destroyed certificates.  
 9. Certificate and other papers as evidence.  
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38. When notice or lapse of time unnecessary.

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40. Alteration and repeal of charter.

## Short title.

Section 1. This chapter shall be known as the general corporation law.

The General Corporation Law was prepared by the commissioners of statutory revision and enacted by the legislature of 1890, taking effect May 1, 1891. The entire act was amended and rewritten in 1892, chapter 687. The General Corporation Law constitutes the first chapter in the scheme of revision of the corporate laws proposed by the commission. This was followed by The Stock Corporation Law (L. 1890, ch. 564); The Business Corporations Law (L. 1890, ch. 567); The Railroad Law (L. 1890, ch. 565); The Transportation Corporations Law (L. 1890, ch. 566); The Insurance Law (L. 1892, ch. 690); The Banking Law (L. 1892, ch. 689); The Membership Corporations Law (L. 1895, ch. 559), and The Religious Corporations Law (L. 1895, ch. 723). The General and Stock Corporation Laws do not provide for the formation of corporations. The former contains provisions applicable to all corporations, while the latter contains provisions applicable to all stock corporations, except as specially excepted therein. The remaining corporate laws contain the provisions for the formation of corporations, and the provisions peculiar to the particular class of corporations to which the law relates. Wherever a provision of such a law conflicts with the general or stock corporation law, it prevails. Gen. Corp. L., § 33. A stock business corporation to determine the law for its government must, therefore, look to the General Corporation Law, which contains the provisions applicable to all corporations, the Stock Corporation Law, which contains the provisions applicable to all stock corporations, and the Business Corporations Law, which contains the provisions peculiar to business corporations as such.

## Classification of corporations.

§ 2. A corporation shall be either:

1. A municipal corporation.

2. A stock corporation.

3. A non-stock corporation; or,

4. A mixed corporation.

A stock corporation shall be either:

1. A monied corporation.

2. A transportation corporation, or

3. A business corporation.

A non-stock corporation shall be either:

1. A religious corporation, or

2. A membership corporation.



## General Corporation Law — §§ 3-4.

A mixed corporation shall be either:

1. A cemetery corporation,
2. A library corporation,
3. A co-operative corporation,
4. A board of trade corporation; or
5. An agricultural and horticultural corporation.

A transportation corporation shall be either:

1. A railroad corporation, or
2. A transportation corporation other than a railroad corporation.

A membership corporation shall include benevolent orders and fire and soldiers' monument corporations.

A reference in a general law to a class of corporations described in accordance with this classification shall include all corporations theretofore belonging to such class.

The term "mixed corporation" refers to a class of corporations, which, at the time of the enactment of this chapter, the commissioners intended to include in a "mixed corporations law." Such chapter was never enacted, and most of the corporations which were to have been included have been included in the Membership Corporations Law.

### Definitions.

§ 3. 1. A municipal corporation includes a county, town, school district, village and city, and any other territorial division of the State established by law with powers of local government.

2. A stock corporation is a corporation having a capital stock divided into shares, and which is authorized by law to distribute to the holders thereof dividends or shares of and surplus profits of the corporation. A corporation is not a stock corporation because of having issued certificates called certificates of stock, but which are in fact merely certificates of membership and which is not authorized by law to distribute to its members any dividends or share of profits arising from the operations of the corporation.

3. The term non-stock corporation includes every corporation other than a stock corporation.

4. A moneyed corporation is a corporation formed under or subject to the banking or the insurance law.

5. A domestic corporation is a corporation incorporated by or under the laws of the State or colony of New York. Every corporation which is not a domestic corporation is a foreign corporation, except as provided by the Code of Civil Procedure for the purpose of construing such code.

Code Civ. Pro., § 3343, subd. 18, post. A corporation created by or under the laws of the United States is a domestic corporation in the State in which it is located.]

6. The term directors when used in relation to corporations, shall include trustees or other persons, by whatever name known, duly appointed or designated to manage the affairs of the corporation.

Penal Code, § 614, post, defines "directors."

7. The term, certificate of incorporation, shall include articles of association or any other written instruments required by law to be filed, to effect the incorporation of a corporation, including a certified copy of an original certificate of incorporation filed for such purpose in pursuance of law.

8. The term, member of a corporation, shall include every person having a right to vote at a meeting of the corporation for the election of directors, other than a person having a right to vote only upon a proxy.

9. The term, office of a corporation, means its principal office within the State or principal place of business within the State, if it has no principal office therein.

10. The term, business of a corporation, when used with reference to a non-stock corporation, includes the operations for the conduct of which it is incorporated.

11. The term, corporate law or laws, when used in any law forming a part of the revision of the general laws of the State of which this chapter is a part, means the general laws of the State relating to corporations included in such revision. (Thus amended by L. 1895, ch. 672.)

Construction of corporate laws. Gen. Corp. L., § 33, post.

Under the Code of Civil Procedure a corporation chartered by Congress is a domestic corporation, if domiciled in this State. *McLanahan v. Mott*, 73 Hun, 131; 56 N. Y. St. Rep. 85 (1893).

Principal office and place of business are synonymous, and as designated in the certificate of incorporation is conclusive for the purposes of taxation. *People ex rel. Knickerbocker Press v. Barker*, 87 Hun, 341; 34 N. Y. Supp. 269; 68 N. Y. St. Rep. 149 (1895); *aff'd*, 147 N. Y. 715; 42 N. E. Rep. 725. For place of taxation of corporations, see Tax L., § 11, post, and cases cited.

### Qualifications of incorporators.

§ 4. A certificate of incorporation must be executed by natural persons, who must be of full age, and at least two-thirds of them must be citizens of the United States, and one of them a resident of this State. This section shall not apply to a corporation formed by the reincorporation or consolidation of existing corporations, or to the reorganization of a corporation upon the sale of the property and franchises of a previously existing corporation or otherwise. (Thus amended by L. 1895, ch. 672.)

Promoters occupy a position of trust and are liable for concealment of material facts to per-

## General Corporation Law — § 5.

sons whom they induce to subscribe to corporate stock. *Brewster v. Hatch*, 122 N. Y. 349; 25 N. E. Rep. 505; 33 N. Y. St. Rep. 527 (1890).

A preliminary agreement between promoters and incorporators who became stockholders and trustees of a corporation is binding on the corporation. *Burden v. Burden*, 8 App. Div. 160 (1896).

Where the promoter of a water company engaged to pay the plaintiff for his services in securing the right of way, etc., before organization, and he became its president with members of his family as principal officers, it was held that the company was liable for the amount agreed upon. *Oakes v. Cattaraugus Water Co.*, 143 N. Y. 430; 38 N. E. Rep. 461 (1894).

Comparatively slight evidence is necessary to establish that a corporation formed by the members of a preceding partnership assumed the contracts of the firm. *Hall v. Herter Bros.*, 83 Hun, 19; 31 N. Y. Supp. 692; 64 N. Y. St. Rep. 378 (1894).

The liability of promoters for misrepresentation in procuring subscriptions extends to all those who are induced by their agents to subscribe to the stock. *Walker v. Anglo Mortgage & Trust Co.*, 72 Hun, 334 (1893).

A corporation upon its organization becomes bound by an agreement between its promoters made in furtherance of the objects for which the corporation was formed. *Rogers v. N. Y. & Texas Land Co.*, 134 N. Y. 197; 32 N. E. Rep. 27; 48 N. Y. St. Rep. 263 (1892).

The corporation becomes liable for services rendered by a promoter to the incorporators if for its benefit and accepted by them. *Harrison v. Vermont Manganese Co.*, 1 Misc. Rep. 402; 49 N. Y. St. Rep. 873 (1892).

Where an agreement is made with parties carrying on a business which afterward becomes a corporation by the same name and the corporation enjoys the fruits of the agreement, it cannot defend an action against it on the ground that it was unincorporated at the time the agreement was made. *Bommer v. American Spiral Spring Co.*, 81 N. Y. 468 (1880).

A corporation is not bound by the promises of its chief promoter in reference to stock, made without its authority. *Dillon v. Commercial Cable Co.*, 87 Hun, 444; 68 N. Y. St. Rep. 449 (1895).

Promoters are liable for work and material furnished on their order, if the company is never organized, as individuals. *Hub Publishing Co. v. Richardson*, 37 N. Y. St. Rep. 541 (1891).

### Filing and recording certificates of incorporation.

§ 5. Every certificate of incorporation and amended or supplemental certificate hereafter executed shall be in the English language, and, except of a religious, cemetery, moneyed, municipal or fire department corporation, shall be filed in the office of the secretary of State, and shall be by him duly recorded and indexed in books specially provided therefor; and a certified copy of such certificate or amended or supplemental certificate with a certificate of the secretary of State of such filing and record, or a dupli-

cate original of such certificate or amended or supplemental certificate shall be filed and similarly recorded and indexed in the office of the clerk of the county in which the office of the corporation is to be located, or, if it be a non-stock corporation, and such county be not determined upon at the time of executing the certificate of incorporation, in such county clerk's office as the judge approving the certificate shall direct. All taxes required by law to be paid before or upon incorporation and the fees for filing and recording such certificate must be paid before filing. No corporation shall exercise any corporate powers or privileges until such taxes and fees have been paid. (Thus amended by L. 1895, ch. 672.)

Organization tax. Tax L., § 180, post. Fees of secretary of State, for filing, ten dollars; for recording, fifteen cents per folio. Fees of county clerk, for filing, six cents; for recording, ten cents per folio. Executive L., § 26, p. 78; Code Civ. Pro., § 3304, post.

A colorable compliance with the law for its organization, followed in the case of a railroad corporation, by the operation of its road for twelve years made it a de facto corporation, and not open to question by a third party. *Laming v. Galusha*, 81 Hun, 247; 30 N. Y. Supp. 767; 62 N. Y. St. Rep. 709 (1894); aff'd, 151 N. Y. 648; 45 N. E. Rep. 1132.

User alone is not sufficient to establish a corporation. Persons cannot take a charter with which they have no concern and which belongs to others and effect a corporation de facto by pretense of user thereunder. *Welch v. Old Dominion Mining & Railway Co.*, 38 N. Y. St. Rep. 916 (1890).

Merely acting as such for however long does not establish a corporation de facto. *DeWitt v. Hastings*, 40 Super. Ct. 463 (1876); aff'd, 69 N. Y. 518.

Some attempt at organization must be made in order to constitute a de facto corporation. *Bradley Fertilizer Co. v. South Publishing Co.*, 4 Misc. Rep. 172; 23 N. Y. Supp. 675; 53 N. Y. St. Rep. 214 (1893).

A party to a suit, in order to show itself to be a corporation de facto, must prove the existence of a law authorizing its incorporation, proceedings taken for that purpose in professed compliance with the law, and user thereunder. If the law exists, and the record exhibits a bona fide attempt to organize under it, very slight evidence of user beyond this is all that can be required. *Methodist Epls. Union Church v. Pickett*, 19 N. Y. 482 (1859); *Bank of Toledo v. International Bank*, 21 Id. 542 (1860).

Parties assuming to act in a corporate capacity without a legal organization as a corporate body are liable as partners to those with whom they contract. *Fuller v. Rowe*, 57 N. Y. 23 (1857).

A person contracting with a corporation de facto cannot question its corporate character. *Whitford v. Laidler*, 94 N. Y. 145 (1883); *Eaton v. Aspinwall*, 19 Id. 119 (1859); *Buffalo & Alle-*

gany R. R. Co. v. Cary, 26 Id. 75 (1862); Commercial Bank of Keokuk v. Pfeiffer, 108 Id. 242 (1888).

A defect in the proceedings to organize a corporation is no defense to a stockholder sued to enforce his individual liability, who has participated in its acts of user as a corporation de facto, and appeared as a shareholder upon its books when the debt for which he is sued was contracted. *Eaton v. Aspinwall*, 19 N. Y. 119 (1859). Nor is the fact that such corporation is a corporation de facto a defense to an action by the corporation for unpaid subscriptions. *Buffalo & Allegany R. R. Co. v. Cary*, 26 N. Y. 75 (1862).

It seems where power is conferred upon a corporation duly formed, it will not be defeated simply because the corporation has done or omitted some act which may be a cause of forfeiture. *N. Y. Cable Co. v. Mayor, etc., of N. Y.*, 104 N. Y. 1 (1887).

A corporation organized under an unconstitutional statute, which has assumed and exercised corporate powers thereunder, is a corporation de facto. *Coxe v. State*, 144 N. Y. 396; 39 N. E. Rep. 400; 63 N. Y. St. Rep. 642 (1895).

A writ of mandamus may be granted to compel a ministerial officer to exercise his functions. *People ex rel. Derby v. Rice*, 129 N. Y. 461; 29 N. E. Rep. 358 (1891); *People ex rel. N. Y. Phonograph Co. v. Rice*, 57 Hun, 486; aff'd, 128 N. Y. 591; 28 N. E. Rep. 251 (1891).

The mere fact that a corporation carries on business after the expiration of its charter, does not render the stockholders liable as partners. *Savings Bank v. Walker*, 66 N. Y. 424 (1876).

### Corporate names.

§ 6. No certificate of incorporation of a proposed corporation having the same name as an existing domestic corporation, or a name so nearly resembling it as to be calculated to deceive, shall be filed or recorded in any office for the purpose of effecting its incorporation. A corporation formed by the re-incorporation, reorganization or consolidation of other corporations or upon the sale of the property or franchises of a corporation, may have the same name as the corporation or one of the corporations to whose franchises it has succeeded. No corporation shall be hereafter organized under the laws of this State with the word bank, insurance, indemnity, guarantee or benefit as part of its name, except a corporation formed under the banking law or the insurance law. (Thus amended by L. 1895, ch. 672.)

Proceeding for change of name. Code Civ. Proc., §§ 2411-17, post. "Actions and proceedings relating to corporations."

An injunction lies to restrain the simulation and use by one corporation of the name of a prior corporation, which tends to create confusion, and enable the corporation to obtain the business of the prior one. *Chas. S. Higgins Co. v. Higgins Soap Co.*, 144 N. Y. 462; 39 N. E. Rep.

490 (1895). In this case many of the prior authorities in the State are cited and discussed.

It is unnecessary that there should be a fraudulent intent on the part of the corporation. The mere use of a name which is an infringement is sufficient to establish the right to a permanent injunction. *Matter of U. S. Mortgage Co.*, 83 Hun, 572; 32 N. Y. Supp. 11 (1894).

A corporation must not by using the individual name of one of its incorporators infringe upon the name of a prior corporation. *De Long v. De Long Hook & Eye Co.*, 89 Hun, 399; 35 N. Y. Supp. 509 (1895); *S. Howes Co. v. Howes Grain Cleaner Co.*, 19 App. Div. 625 (1897); *S. Howes Co. v. The Howes Grain Cleaner Co.*, 24 Misc. Rep. 83 (1898). In the last case, all the prior authorities in the State are collated.

The name "The Tuerk Water Meter Co." is an infringement of the name "The Tuerk Water Motor Co." *Tuerk Hydraulic Power Co. v. Tuerk*, 92 Hun, 65; 36 N. Y. Supp. 384; 71 N. Y. St. Rep. 154 (1895).

A temporary injunction will not issue restraining a corporation from using a name similar to the plaintiff's. *Commercial Union Assurance Co. v. Smith*, 18 N. Y. St. Rep. 151 (1888).

A corporation cannot appropriate to its exclusive use words necessary to describe the business it is intended to carry on by including them in its corporate name. *Hygeia Water Ice Co. v. N. Y. Hygeia Ice Co.*, 47 N. Y. St. Rep. 71; 19 N. Y. Supp. 602 (1892); aff'd, 140 N. Y. 94; 35 N. E. Rep. 417; 55 N. Y. St. Rep. 566.

The name "Buffalo Commercial Bank" is not an infringement upon "Bank of Commerce in Buffalo." *Matter of Bank of Attica*, 35 N. Y. St. Rep. 708 (1891).

The name "United States Commercial Agency & Collecting Co." is an infringement upon the name "United States Mercantile Reporting Co." In re U. S. Mercantile Reporting & Collecting Association, 22 N. Y. St. Rep. 494 (1889). But see s. c., 115 N. Y. 176 (1889).]

### Amended and supplemental certificates.

§ 7. If in the original or amended certificate of incorporation of any corporation, or if in a supplemental certificate of any corporation any informality exist, or if any such certificate contain any matter not authorized by law to be stated therein, or if the proof or acknowledgment thereof shall be defective, the incorporators or directors of the corporation may make and file an amended certificate correcting such informality or defect or striking out such unauthorized matter; and the certificate amended shall be deemed to be amended accordingly as of the date such amended certificate was filed, and upon the filing of such an amended certificate of incorporation, the corporation shall then for all purposes be deemed to be a corporation from the time of filing the original certificate.

The supreme court may, upon due cause shown, and proof made, and upon notice to the attorney-general, and to such other per-



sons as the court may direct, and upon such terms and conditions as it may impose, amend any certificate of incorporation which fails to express the true object and purpose of the corporation, so as to truly set forth such object and purpose.

When an amended or supplemental certificate is filed, an entry shall be made upon the margin of the index and record of the original certificate of the date and place of record of every such amended certificate.

The amendment of a certificate under this section shall be without prejudice to any pending action or proceeding, or to any rights previously accrued.

It seems that a statute which authorizes the filing of an amended certificate in the case of the omission of any matter required to be stated therein, is intended only to remedy patent omissions, that is, omissions of things which are required to be stated and which, being omitted, make the certificate imperfect on its face. *Matter of N. Y., Lackawanna & W. R. R. Co.*, 25 Hun, 556 (1881). So held under the former law. Section 7 seems to be broad enough to include other than patent omissions. For powers of corporation de facto, see § 5, ante, cases cited.

#### Lost or destroyed certificates.

§ 8. If either of the certificates of incorporation shall be lost or destroyed after filing, a certified copy of the other certificate may be filed in the place of the one so lost or destroyed and as of the date of its original filing, and such certified copy shall have the same force and effect as the original certificate had when filed.

#### Certificate and other papers as evidence.

§ 9. The certificate of incorporation of any corporation duly filed shall be presumptive evidence of its incorporation, and any amended certificate or other paper duly filed or recorded relating to the incorporation of any corporation, or its existence or management, and containing facts required or authorized by law to be stated therein, shall be presumptive evidence of the existence of such facts. (Thus amended by L. 1895, ch. 672.)

Certified copies evidence with same force as original. *Code Civ. Pro.*, § 933. A certified copy of a certificate of incorporation is prima facie proof that it was duly subscribed by the persons, whose signatures are attached thereto. *Matter of N. Y., Lackawanna & W. R. R. Co.*, 99 N. Y. 12; 1 N. E. Rep. 27 (1885); aff'g 35 Hun, 220.

#### Limitation of powers.

§ 10. No corporation shall possess or exercise any corporate powers not given by law, or not necessary to the exercise of the powers so given. The certificate of incorporation of any corporation may contain any provision

for the regulation of the business and the conduct of the affairs of the corporation, and any limitation upon its powers, or upon the powers of its directors and stockholders, which does not exempt them from the performance of any obligation or the performance of any duty imposed by law. (Thus amended by L. 1895, ch. 672.)

*Business Corporations Law*, § 2, to same effect as last sentence. Added by amendment of 1895 and thus made applicable to all stock corporations.

#### Powers, strictly construed.

Whatever privileges granted by the legislature to a corporation come under review in the courts, they are to be strictly construed against the corporation; nothing passes but what is granted in clear and explicit terms. *People ex rel. Third Ave. R. R. Co. v. Newton*, 112 N. Y. 396; 21 N. Y. St. Rep. 8; 19 N. E. Rep. 831 (1889).

#### Implied powers.

A corporation has such powers as may be deemed to be reasonably implied as a means of carrying out the powers expressly given. *Brooklyn Heights R. R. Co. v. City of Brooklyn*, 152 N. Y. 244; 46 N. E. Rep. 509 (1897); *People ex rel. Tiffany v. Campbell*, 144 N. Y. 166; 38 N. E. Rep. 990; 63 N. Y. St. Rep. 44 (1894); *Legrand v. Manhattan Mercantile Association*, 80 N. Y. 638 (1880); *O'Grady v. N. Y. Mutual Live Stock Ins. Co.*, 16 App. Div. 567 (1897); *Steinway v. Steinway & Sons*, 17 Misc. Rep. 43 (1895).

#### Ultra vires.

History and limitations of the doctrine. *Bath Gas Light Co. v. Claffy*, 151 N. Y. 24; 45 N. E. Rep. 390 (1896).

The rule is well settled that the plea of ultra vires should not prevail whether interposed for or against a corporation, when it will not advance justice, but will on the contrary accomplish a legal wrong. *Rider Life Raft Co. v. Roach*, 97 N. Y. 378 (1884); *Whitney Arms Co. v. Barlow*, 63 Id. 62; *Neillgan v. Campbell*, 47 N. Y. St. Rep. 576 (1892).

The doctrine of ultra vires has two phases, one where the public is concerned, the other where the question is between the stockholder and the corporation or third parties. No assent of the stockholders can validate an act where the public is concerned, but acts not thus illegal though involving a want of power may, if they only affect the interest of the stockholders, be made good by their assent, which may be implied. *Kent v. Quicksilver Mining Co.*, 78 N. Y. 159, 185 (1879); *Sheldon Hat Blocking Co. v. Elckemeyer Hat Blocking Co.*, 90 Id. 607 (1882); *Steinway v. Steinway & Sons*, 17 Misc. Rep. 43 (1895).

Where a power exercised by a corporation is manifestly foreign to its charter, one contracting with it is bound to know that such contract is ultra vires. *Jemison v. Citizens' Savings Bank*, 122 N. Y. 135; 25 N. E. Rep. 264 (1890).

A person contracting with a corporation in reference to a matter within the apparent scope of its powers, is not charged with notice of ultra vires, and the contract may be enforced. *Sistare v. Best*, 88 N. Y. 527 (1882); affg. 16 Hun, 611 (1879).

A corporation cannot plead ultra vires where it has received the benefit of a contract faithfully performed by the other party. *Linkauf v. Lombard*, 137 N. Y. 417; 33 N. E. Rep. 472; 51 N. Y. St. Rep. 63 (1893); *Woodruff v. Erie Railway Co.*, 93 N. Y. 609 (1883); *Tonawanda R. R. Co. v. N. Y. & Lake Erie R. R. Co.*, 42 Hun, 496 (1886); *Metropolitan Trust Co. v. N. Y., Lake Erie, etc., R. R. Co.*, 45 id. 84; *Castle v. Lewis*, 78 N. Y. 131 (1879); *Whitney Arms Co. v. Barlow*, 63 id. 62; *Ogdensburg & Lake Catherine R. R. Co. v. Vermont & Canada R. R. Co.*, 16 Abb. Pr. (N. S.) 249; aff'd, 4 Hun, 712 (1874); *Scott v. Middletown, etc., R. R. Co.*, 12 Week. Dig. 334 (1881); *Peck v. Doran & Wright Co.*, 57 Hun, 343; 10 N. Y. Supp. 410; 32 N. Y. St. Rep. 405 (1890); *Cunningham v. Massena Springs, etc., R. R. Co.*, 63 Hun, 439; 18 N. Y. Supp. 600; 44 N. Y. St. Rep. 723 (1892); aff'd, 138 N. Y. 614; 33 N. E. Rep. 1082; 51 N. Y. St. Rep. 933; *Schurr v. N. Y. & Brooklyn Investment Co.*, 45 N. Y. St. Rep. 645; 18 N. Y. Supp. 454 (1892); *Homestead Bank v. Wood*, 1 Misc. Rep. 145; 20 N. Y. Supp. 640; 48 N. Y. St. Rep. 775 (1892); *Pocantico Water-Works Co. v. Low*, 20 Misc. Rep. 484 (1897); but this rule does not apply to a case where if the contract had never been made, the plaintiff would have been entitled to receive all or more than what was received under it. *Metropolitan R. R. Co. v. Marshall R. R. Co.*, 14 Abb. N. C. 103, 131 (1884).

Where a contract is ultra vires merely, a court will not deny to a person contracting with a corporation the enforcement of its provisions, where its validity has been recognized by the corporation and performance has been accepted by it, and its invalidity is not asserted in the pleadings. *Palmer v. Cypress Hill Cemetery*, 122 N. Y. 429; 34 N. Y. St. Rep. 30 (1890).

A stockholder may by long lapse of time be estopped from questioning the action of the corporation or of its officers. *Warren v. Bigelow Blue Stone Co.*, 74 Hun, 304; 56 N. Y. St. Rep. 416 (1893); *Sheldon Hat Blocking Co. v. Eickemeyer Hat Blocking Co.*, 90 N. Y. 607 (1882).

One who has contracted with a corporation and received and retained the benefits of the contract, cannot set up ultra vires in defense of a covenant of his contract. *Diamond Match Co. v. Roeber*, 106 N. Y. 473; 13 N. E. Rep. 419 (1887).

The fact that a corporation lessee had not authority under its charter to enter into a lease will not relieve it from payment of rent for the period covered by its occupancy. *Bath Gas Light Co. v. Claffy*, 151 N. Y. 24; 45 N. E. Rep. 390 (1896).

The carrying on of a business which cannot be transacted legally by a corporation may be restrained by injunction at the suit of a stockholder. *Burden v. Burden*, 8 App. Div. 160 (1896).

A corporation engaged in an ultra vires busi-

ness cannot sue, for damages suffered therein, the agents it employs to carry on the business, where the stockholders acquiesce therein. *Holmes, Booth & Haydens v. Willard*, 125 N. Y. 75; 25 N. E. Rep. 1083; 34 N. Y. St. Rep. 455 (1890).

A corporation cannot as a rule bind its property by an accommodation indorsement. *Fox v. Rural Home Co.*, 90 Hun, 365; 35 N. Y. Supp. 896; 70 N. Y. St. Rep. 558 (1895); aff'd, 157 N. Y. in Memoranda; *Nat. Bank v. German American Warehousing Co.*, 116 N. Y. 281; 22 N. E. Rep. 567; 26 N. Y. St. Rep. 675 (1889).

It is ultra vires for a corporation organized to manufacture goods and sells its product, to purchase goods and sell goods of a similar character manufactured by others. *People ex rel. Tiffany & Co. v. Campbell*, 144 N. Y. 166; 38 N. E. Rep. 990; 63 N. Y. St. Rep. 44 (1894).

It is ultra vires for a corporation organized for the purpose of printing, publishing and selling newspapers, to insure the holder of one who has a copy in his possession against accident. *Brisay v. Star Co.*, 13 Misc. Rep. 349; 69 N. Y. St. Rep. 472 (1895).

Speculative contracts entered into by savings banks are ultra vires, and a broker executing an order of that kind is chargeable with notice, and the corporation may avail itself of the defense of ultra vires. *Jemison v. Citizens' Savings Bank*, 122 N. Y. 135; 25 N. E. Rep. 264; 33 N. Y. St. Rep. 335 (1890).

It is not ultra vires for a corporation, where the stockholders do not object, to loan its credit or mortgage its property for the benefit of its president individually, except as against preceding creditors. *Osborn v. Montelac Park Co.*, 89 Hun, 167; 70 N. Y. St. Rep. 406; 35 N. Y. Supp. 610 (1895); aff'd, 153 N. Y. 672.

A stockholder of a steamboat corporation cannot restrain the execution of a contract for paying to a rival company a sum of money for not competing over one of its routes. *Leslie v. Lorillard*, 110 N. Y. 519; 18 N. Y. St. Rep. 520; 18 N. E. Rep. 363 (1888).

### Grant of general powers.

§ 11. Every corporation as such has power, though not specified in the law under which it is incorporated.

1. To have succession for the period specified in its certificate of incorporation or by law, and perpetually when no period is specified.

Extension of existence. Gen. Corp. L., § 32, post.

2. To have a common seal and alter the same at pleasure.

Seal may be impressed on instrument or writing, or substance affixed thereto. Statutory Construction L., § 13, post. If seal is not adopted, seal of officers may be deemed corporate seal. Id.

Neither the corporate seal nor a formal resolution of the managers is necessary for the making of a valid contract by corporation. *Hoag v. Lamont*, 60 N. Y. 96 (1875). See, also, *Leinkauf*

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v. Coleman, 110 N. Y. 50; 17 N. E. Rep. 389; 16 N. Y. St. Rep. 631 (1888); Whitford v. Laidler, 94 N. Y. 145 (1883).

3. To acquire by grant, gift, purchase, devise or bequest, to hold and to dispose of such property as the purposes of the corporation shall require, subject to such limitations as may be prescribed by law.

Power to take by devise is limited by L. 1860, ch. 360, and L. 1848, ch. 319, § 6, the former of which limits the amount devisable to benevolent, charitable and similar corporations to one-half the estate if the testator leaves a husband, wife, child or parent, and the latter of which requires the devise to be made at least two months prior to death to a corporation formed under or subject to the act of 1848 — now revised in the Membership Corporations Law — Limitation on amount which non-stock corporation can take. § 12.

4. To appoint such officers and agents as its business shall require, and to fix their compensation, and

Directors. Stock Corp. L., § 20. Appointment of president, secretary, treasurer and other officers. Stock Corp. L., § 27. Inspectors of election. Stock Corp. L., § 28.

5. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulations of its affairs, and the transfer of its stock, if it has any, and the calling of meetings of its members. Such by-laws also fix the amount of stock, which must be represented at meetings of the stockholders in order to constitute a quorum, unless otherwise provided by law. By-laws duly adopted at a meeting of the members of the corporation shall control the action of its directors. No by-law adopted by the board of directors regulating the election of directors or officers shall be valid unless published for at least once a week for two successive weeks in a newspaper in the county where the election is to be held, and at least thirty days before such election. Subdivisions four and five of this section shall not apply to municipal corporations. (Thus amended by L. 1895, ch. 672.)

Directors may make by-laws, subject to those adopted by members. Gen. Corp. L., § 29, post. By-laws to prescribe manner of appointing inspectors of election. Stock Corp. L., § 28, post. Manner of transferring stock. Stock Corp. L., § 40. May be adopted at special election of directors. Gen. Corp. L., § 25, post. Effect of failure of directors to adopt certain by-laws. Stock Corp. L., § 22, post. By-laws may require action of directors to be taken by more than a majority of a quorum. § 39, post. May prescribe powers and duties of officers. Stock Corp. L., § 27, post.

A by-law adopted in pursuance of law has the force of law. Brick Church v. Mayor, 5 Cow. 538; McDermott v. Board of Police, 5 Abb. Pr. 422.

A by-law must be reasonable and adapted to the purpose of the corporation. People ex rel. Gray v. Medical Society, 24 Barb. 570.

Upon the question whether a by-law is reasonable and in furtherance of the objects of the corporation, see Matthews v. Associated Press, 136 N. Y. 333; 50 N. Y. St. Rep. 9; 32 N. E. Rep. 981 (1893).

An action to have a by-law declared void and to restrain the directors from enforcing it, is not maintainable when its enforcement will not subject the member to injury in person or property. Thomas v. M. M. P. Union, 121 N. Y. 45; 30 N. Y. St. Rep. 563; 24 N. E. Rep. 24 (1890); rev'g 49 Hun, 171.

A corporation cannot alter or amend its by-laws so as to impair rights which have become vested. Kent v. Quicksilver Mining Co., 78 N. Y. 159 (1879).

A business corporation cannot, by its by-laws, so limit the power of its executive officers that the corporation shall not be liable for ordinary engagements made by such officers in the transaction of the company's business with those who have no knowledge of such limitation. Rathbun v. Snow, 123 N. Y. 349; 33 N. Y. St. Rep. 600; 25 N. E. Rep. 379 (1890).

A by-law of a press association which prevents its members from receiving or publishing news dispatches of any other news association covering a like territory, is legal and enforceable. Matthews v. Associated Press, 136 N. Y. 333; 32 N. E. Rep. 981; 50 N. Y. St. Rep. 9 (1893).

A by-law is in the nature of a corporate act, and a corporation cannot enact or pass it, except within the State under whose law it is organized. Mitchell v. Vermont Copper Mining Co., 40 Super. Ct. 406; aff'd, 67 N. Y. 280 (1876).

A private corporation may restrict its membership, by its by-laws, to such persons as the incorporators choose to allow to become members thereof. People v. Holstein-Friesian Ass'n, 41 Hun, 439; People v. Franciscus Benevolent Soc., 24 How. Tr. 216.

A corporation cannot repudiate a note made in renewal of a previous one on which it has received the proceeds merely because it is not issued as required by its by-laws. Nat. Spraker Bank v. Geo. C. Treadwell Co., 80 Hun, 363; 30 N. Y. Supp. 77; 61 N. Y. St. Rep. 817 (1894).

**Enlargement of limitations upon the amount of the property of non-stock corporations.**

§ 12. If any general or special law heretofore passed, or any certificate of incorporation, shall limit the amount of property a corporation, other than a stock corporation may take or hold, such corporation may take and hold property of the value of three million dollars or less, or the yearly income derived from which shall be five hundred thousand dollars or less, notwithstanding



any such limitations. In computing the value of such property, no increase in value arising otherwise than from improvements made thereon shall be taken into account. (Thus amended by L. 1894, ch. 400.)

Non-stock corporation defined. Gen. Corp. L., §§ 2, 3, ante.

For the purpose of estimating the value of property which a corporation can take and hold, where the same is limited, its debts must be deducted. *Wetmore v. Parker*, 52 N. Y. 450 (1873).

#### Acquisition of additional real property.

§ 13. When any corporation shall have sold or conveyed any part of its real property, the supreme court may, notwithstanding any restriction of a general or special law, authorize it to purchase and hold from time to time other real property, upon satisfactory proof that the value of the property so purchased does not exceed the value of the property so sold and conveyed within the three years next preceding the application.

#### Acquisition of property in other States.

§ 14. Any domestic corporation transacting business in other States or foreign countries may acquire and dispose of such property as shall be requisite for such corporation in the convenient transaction of its business.

Such power is, however, dependent upon the will of the State or foreign country in which the corporation is doing business. *Demarest v. Flack*, 128 N. Y. 205; 40 N. Y. St. Rep. 383; 28 N. E. Rep. 645 (1891). See authorities cited under § 15, as to power of the State to restrict foreign corporations.

#### Certificate of authority of a foreign corporation.

§ 15. No foreign stock corporation other than a monied corporation, shall do business in this State without having first procured from the secretary of State a certificate that it has complied with all the requirements of law to authorize it to do business in this State, and that the business of the corporation to be carried on in this State is such as may be lawfully carried on by a corporation incorporated under the laws of this State for such or similar business, or, if more than one kind of business, by two or more corporations so incorporated for such kinds of business respectively. The secretary of State shall deliver such certificate to every such corporation so complying with the requirements of law. No such corporation now doing business in this State shall do business herein after December 31, 1892, without having procured such certificate from the secretary of State, but any lawful contract previously made by the corporation may be performed and enforced within the State subse-

quent to such date. No foreign stock corporation doing business in this State without such certificate shall maintain any action in this State upon any contract made by it in this State until it shall have procured such certificate.

Definition of foreign corporation. Gen. Corp. L., § 3, ante. License fee to be paid by foreign corporations doing business within the State. Tax. L., § 181, and L. 1895, ch. 240, post. Suits by and against foreign corporation. Code Civ. Pro., §§ 1779-80, post, "Actions and proceedings relating to corporations," and cases cited. The power of the State to impose conditions of this character is almost too well established to require the citation of authorities. See *Phila. Fire Ass'n v. New York*, 119 U. S. 110; *Christian Union v. Yount*, 101 id. 352; *Bank of Augusta v. Earle*, 13 Peters (U. S.), 519; *Pembina Mining Co. v. Penn.*, 125 U. S. 181; *Norfolk R. R. Co. v. Pa.*, 136 id. 114; *Charlotte R. R. Co. v. Gibbes*, 142 id. 390, 391; *Minn. R. R. Co. v. Beckwith*, 129 id., at p. 28; *Horn Silver Mining Co. v. New York*, 143 id. 305; *People v. Formosa*, 131 N. Y. 478; 43 N. Y. St. Rep. 654; 30 N. E. Rep. 492 (1892); *Demarest v. Flack*, 128 N. Y. 205; 40 N. Y. St. Rep. 483; 28 N. E. Rep. 645 (1891).

The procurement of the certificate places the corporation on the same basis as a domestic corporation. *Lancaster v. Amsterdam Improvement Co.*, 140 N. Y. 576; 56 N. Y. St. Rep. 434; 35 N. E. Rep. 964 (1894).

What constitutes doing business within the State. *Murphy Varnish Co. v. Connell*, 10 Misc. Rep. 553; 65 N. Y. St. Rep. 817; 32 N. Y. Supp. 492 (1895); *Bertha Zinc & Mineral Co. v. Clute*, 7 Misc. Rep. 123; 57 N. Y. St. Rep. 70; 27 N. Y. Supp. 342 (1894); *Cooper Mfg. Co. v. Ferguson*, 113 U. S. 727. See, also, cases cited under § 182 of the Tax Law, post, "Taxation of Corporations."

A corporation which has obtained the certificate required by this section may enforce a contract made by it before procuring the certificate. *Neuchatel Asphalt Co. v. Mayor, etc.*, 155 N. Y. 373; *Reedy Elevator Co. v. American Grocery Co.*, 23 Misc. Rep. 520. The effect of these decisions is to overrule *Providence Steam & Gas Pipe Co. v. Connell*, 86 Hun, 319; 67 N. Y. St. Rep. 196; 33 N. Y. Supp. 482 (1895).

Only contracts made within the State are within the terms of the section. *Am. Broom & Brush Co. v. Addickes*, 19 Misc. Rep. 36 (1897); *Novelty Mfg. Co. v. Connell*, 88 Hun, 254; 68 N. Y. St. Rep. 697; 34 N. Y. Supp. 717 (1895); *Tallahpoosa Lumber Co. v. Holbert*, 5 App. Div. 559; 39 N. Y. Supp. 432 (1896); *Shelby Steel Tube Co. v. Burgess Gun Co.*, 8 App. Div. 444; 75 N. Y. St. Rep. 267; 40 N. Y. Supp. 871 (1896).

An action on an assigned contract does not come within terms of section. *O'Reilly, Skelly & Fogarty Co. v. Greene*, 18 Misc. Rep. 423; 75 N. Y. St. Rep. 1416; 41 N. Y. Supp. 1056 (1896); nor a judgment creditor's action. *Schlitz Co. v. Ester*, 86 Hun, 22 (1895); nor a replevin action. *American Typefounders Co. v. Conner*, 6 Misc. Rep. 391 (1894).

Affidavit of procurement of certificate is essential to valid attachment. *Sawyer Lumber Co. v. Bussell*, 84 Hun, 114 (1895).

Failure to comply with this section is a matter of affirmative defense. *O'Reilly, Skelly & Fogarty Co. v. Greene*, 17 Misc. Rep. 302; 40 N. Y. Supp. 360 (1896).

The statute of another State showing that a corporation of a certain kind could be organized under its general laws and a certificate, executed, in due form, that the statutory requirements had been complied with, shows an organization so far valid as to enable the corporation to transact business in this State. *Demarest v. Flack*, 128 N. Y. 205; 40 N. Y. St. Rep. 383; 28 N. E. Rep. 645 (1891); aff'g, 32 N. Y. St. Rep. 675.

So long as a corporation is recognized by the courts and authorities of its home State, it is entitled to the same recognition here unless it appears that it was formed for purposes illegal here or was doing acts prohibited by the laws of this State. *U. S. Vinegar Co. v. Schlegel*, 143 N. Y. 537; 38 N. E. Rep. 729 (1894).

Liability of stockholders in a Kansas corporation cannot be enforced in this State in an action at law by a single creditor against a single stockholder for the recovery of a specified sum. *Marshall v. Sherman*, 148 N. Y. 9; 43 N. E. Rep. 419 (1895).

Where the laws of the State of domicile provide a special remedy, the statutory liability of stockholders of an insolvent foreign corporation cannot be enforced in this State. *Cleveland, Lorrain, etc., R. R. Co. v. Kent*, 87 Hun, 329; 68 N. Y. St. Rep. 384 (1895).

#### **Proof to be filed before granting certificate.**

§ 16. Before granting such certificate the secretary of State shall require every such foreign corporation to file in his office a sworn copy in the English language of its charter or certificate of incorporation and a statement under its corporate seal particularly setting forth the business or objects of the corporation which it is engaged in carrying on or which it proposes to carry on within the State, and a place within the State which is to be its principal place of business, and designating in the manner prescribed in the code of civil procedure a person upon whom process against the corporation may be served within the State. The person so designated must have an office or place of business at the place where such corporation is to have its principal place of business within the State. Such designation shall continue in force until revoked by an instrument in writing designating in like manner some other person upon whom process against the corporation may be served in this State. If the person so designated dies or removes from the place where the corporation has its principal place of business within the State, and the corporation does not within thirty days after such death or removal designate in

like manner another person upon whom process against it may be served within the State, the secretary of State may revoke the authority of the corporation to do business within the State, and process against the corporation in an action upon any liability incurred within this State before such revocation, may, after such death or removal, and before another designation is made, be served upon the Secretary of State. At the time of such service the plaintiff shall pay to the secretary of State, two dollars, to be included in his taxable costs and disbursements, and the secretary of State shall forthwith mail a copy of such notice to such corporation if its address, or the address of any officer thereof, is known to him. (Thus amended by L. 1895, ch. 672.)

Service of summons on foreign corporation, and designation of person on whom service of process may be made. Code Civ. Pro., § 432, post, "Provisions of Code of Civil Procedure."

A corporation by designating an agent in another State upon whom process may be served, does not thereby change its residence. *Douglas v. Phenix Ins. Co.*, 138 N. Y. 209; 33 N. E. Rep. 938; 52 N. Y. St. Rep. 164 (1893).

#### **Acquisition of real property in this State by certain foreign corporations.**

§ 17. Any foreign corporation created under the laws of the United States, or of any State or territory thereof, and doing business in this State, may acquire such real property in this State as may be necessary for its corporate purposes in the transaction of its business in this State, and convey the same by deed or otherwise in the same manner as a domestic corporation.

See note to § 18.

#### **Acquisition by foreign corporation of real property in this State.**

§ 18. Any foreign corporation may purchase at a sale upon the foreclosure of any mortgage held by it, or, upon any judgment or decree for debts due it, or, upon any settlement to secure such debts, any real property within this State covered by or subject to such mortgage, judgment, decree or settlement, and may take by devise any real property situated within this State and hold the same for not exceeding five years from the date of such purchase, or from the time when the right to the possession thereof vests in such devisee and convey it by deed or otherwise in the same manner as a domestic corporation. (Thus amended by L. 1894, ch. 136.)

Sections 17 and 18 should not be treated as any limitation upon the powers of a corporation which has obtained a certificate and is doing

business under sections 15 and 16. "Section 18 may still have an office to perform in limiting the period of time for which a foreign corporation, without a certificate here, may hold land taken for a debt, or purchased at a sale under a judgment or decree; while the necessity of retaining section 17 is not readily perceived. The foreign corporation which desires to acquire real property solely for use connected with the transaction of its business here, must, under section 15, procure the certificate of the secretary of State as a condition of being permitted to carry on business, and, having the certificate, its right to do business as freely as a domestic corporation, necessarily carries with it the recognition of the right to acquire and hold what real property may be necessary for that purpose. Both sections, possibly, were retained in the revision of the corporation laws out of abundant caution." *Lancaster v. Amsterdam Improvement Co.*, 140 N. Y. 576; 56 N. Y. St. Rep. 434; 35 N. E. Rep. 964 (1894).

### Prohibition of banking powers.

§ 19. No corporation except a corporation formed under or subject to the banking laws, shall by any implication or construction be deemed to possess the power of carrying on the business of discounting bills, notes or other evidences of debt, of receiving deposits, of buying gold or silver bullion or foreign coins, or buying and selling bills of exchange, or shall issue bills, notes or other evidences of debt for circulation as money.

### Qualification of members as voters.

§ 20. At every election of directors and meeting of the members of any corporation, every member who is not in default in the payment of his subscriptions upon his stock or disqualified by the by-laws, shall be entitled to one vote, if a non-stock corporation, and, if a stock corporation, to one vote for every share of stock held by him for ten days immediately preceding the election or meeting.

Every pledgor of stock standing in his name on the books of the corporation shall be deemed the owner thereof for the purposes of this section.

The certificate of incorporation of any stock corporation may provide that all elections of directors of such corporation, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected, and that he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them as he may see fit, which right, when exercised, shall be termed cumulative voting. The stockholders of a corporation heretofore formed, who, by the provisions of laws existing on April 30, 1891, were entitled to the exercise of such right, may hereafter exercise such right

according to the provisions of this section.

No person shall vote or issue a proxy to vote at any meeting of the stockholders or bondholders, or both, of a stock corporation, upon any stock or bonds which have not been owned by him for at least ten days next preceding such meeting, notwithstanding such stock or bonds may stand in his name on the books of the corporation.

No member of a corporation shall sell his vote or issue a proxy to vote to any person for any sum of money or anything of value.

The books and papers containing the record of membership of the corporation shall be produced at any meeting of its members upon the request of any member. If the right to vote at any such meeting shall be challenged, the inspectors of election, or other persons presiding thereat, shall require such books, if they can be had, to be produced as evidence of the right of the person challenged to vote at such meeting, and all persons who may appear from such books to be members of the corporation may vote at such meeting in person or by proxy, subject to the provisions of this chapter.

Violations of fourth and fifth paragraphs, misdemeanor. Penal Code, § 613, post. Inspectors and their oath. Stock Corp. L., § 28, post. Stock-book. Stock Corp. L., § 29, post. The method of voting known as "cumulative," provided by the third paragraph, continues substantially the system formerly contained in the Manufacturing Corporations Act of 1875, ch. 611, § 26. Meeting for election of directors. Stock Corp. L., § 20.

A shareholder has a legal right to vote upon a measure even though he has a personal interest therein separate from other shareholders. *Gamble v. Queens County Water-Works Co.*, 123 N. Y. 91; 33 N. Y. St. Rep. 88 (1890).

A corporation which has legally purchased the stock of another corporation may vote on it the same as any other stockholder. *Oelbermann v. N. Y. & Northern R. R. Co.*, 77 Hun, 332 (1894); *In re Buffalo, N. Y. & Erie R. R. Co.*, 74 N. Y. St. Rep. 345 (1896); but such right does not authorize such corporation to divert the income of the business or otherwise manage its affairs to the injury of minority stockholders. *Farmers' Loan & Trust Co. v. N. Y. & N. R. Co.*, 150 N. Y. 410; 44 N. E. Rep. 1043 (1896).

In the absence of any provision in the certificate or by-laws of a company as to the manner of voting at stockholders' meetings, such voting must be by shares of stock owned by the stockholders present. *Matter of Rochester District Tel. Co.*, 40 Hun, 172 (1886).

An administrator has all the rights of a testator who was a stockholder in a corporation, including the right to vote at the election of directors. No formal transfer on the books is necessary. *Matter of No. Shore S. I. Ferry Co.*, 63 Barb. 556 (1872).

Where the stock-book of a corporation is inac-



## General Corporation Law — §§ 21, 22.

cessible for the purpose of making transfers of stock, the directors may adopt a new one. *Matter of Argus Co.*, 138 N. Y. 557; 34 N. E. Rep. 388; 53 N. Y. St. Rep. 270 (1893); *Cocorro Mountain Mining Co. v. Preston*, 17 Misc. Rep. 220 (1896).

This section, in connection with section 29, requires the transfer to be made on the books of the corporation ten days before the meeting, and the fact that a registered letter containing a certificate was mailed eleven days before the meeting, but not received until five days before, is not sufficient. *Matter of Glen Salt Co.*, 17 App. Div. 234; 79 N. Y. St. Rep. 568; 45 N. Y. Supp. 568 (1897); *aff'd*, 153 N. Y. 688.

Giving an option for the purchase of stock, although the shares are deposited pursuant to it, does not divest the persons giving the option of their title so as to preclude them from voting on the shares. *Matter of Newcomb*, 42 N. Y. St. Rep. 442; 18 N. Y. Supp. 16 (1891).

It is not necessary that an original subscriber should have his holdings entered in the stock-book before he can act as a stockholder. *Hamilton Trust Co. v. Clemes*, 17 App. Div. 152 (1897).

The transfer of stock subject to a written agreement by which it is only designed to confer the power to vote upon it for three years, and in substance is the sale of a proxy for a consideration, is a violation of this section and does not entitle the transferee to vote on the stock. *Matter of Glen Salt Co.*, 79 N. Y. St. Rep. 568; 45 N. Y. Supp. 568; 17 App. Div. 234 (1897). The objection is available not only to an adverse claimant, but also to the corporation or a stockholder. *Id.*

Where stock has been forfeited for non-payment of an installment, injunction does not lie to restrain the officers from recognizing the former stockholder as a stockholder or from receiving his vote. *Stevens v. Phillips*, 3 Week. Dig. 320 (1876).

### Proxies.

§ 21. Every member of a corporation, except a religious corporation, entitled to vote at any meeting thereof may so vote by proxy.

No officer, clerk, teller or bookkeeper of a corporation formed under or subject to the banking law shall act as proxy for any stockholder at any meeting of any such corporation.

Every proxy must be executed in writing by the member himself, or by his duly authorized attorney. No proxy hereafter made shall be valid after the expiration of eleven months from the date of its execution unless the member executing it shall have specified therein the length of time it is to continue in force, which shall be for some limited period. Every proxy shall be revocable at the pleasure of the person executing it; but a corporation having no capital stock may prescribe in its by-laws the persons who may act as proxies for members, and the

length of time for which proxies may be executed.

A proxy need not be a stockholder. *Matter of Light Hall Mfg. Co.*, 47 Hun, 258 (1888).

Where a proxy is issued in blank and filled in by the holder, the presumption is that that was done with authority. *Matter of White*, 45 Hun, 580 (1887).

Proxies which specify particularly the election at which they are to be cast, the month, year and hours for the election, but leave blank the day of the month because when signed it had not been designated, are valid. *Matter of Townshend*, 46 N. Y. St. Rep. 135 (1892).

A stockholder is prohibited from giving an irrevocable proxy to secure a debt. *Matter of Germicide Co.*, 65 Hun, 606; 20 N. Y. Supp. 495; 40 N. Y. St. Rep. 294 (1892).

### Challenges.

§ 22. Every member of a corporation offering to vote at any election or meeting of the corporation shall, if required by an inspector of election or other officer presiding at such election or meeting, or by any other member present, take and subscribe the following oath: "I do solemnly swear that in voting at this election I have not, either directly, indirectly or impliedly received any promise or any sum of money or anything of value to influence the giving of my vote or votes at this meeting or a consideration therefor." If it is a stock corporation, the oath so taken and subscribed shall contain the following additional provision: "That I have not sold or otherwise disposed of my interest in or title to any shares of stock or bonds in respect to which I offer to vote at this election, but that all such shares or bonds are still owned by me," but if such stock or bonds be pledged, the oath may so state. Any person offering to vote as proxy for any other person shall present his proxy, and, if so required, take and subscribe the following oath: "I do solemnly swear that I have not, either directly, indirectly or impliedly, given any promise for any sum of money or anything of value to induce the giving of a proxy to me to vote at this election, or received any promise or any sum of money or anything of value to influence the giving of my vote at this meeting, or as a consideration therefor. If a stock corporation, the oath so taken and subscribed shall contain the following additional provision: "And that the title to the stocks and bonds upon which I now offer to vote is, to the best of my knowledge and belief, truly and in good faith vested in the persons in whose names they now stand," but if such stocks or bonds be held as security, the oath may so state. The inspectors or persons presiding at the election may administer such oath, and all such oaths and proxies shall be filed in the office of the corporation. (Thus amended by L. 1895, ch. 672.)

**Effect of failure to elect directors.**

§ 23. If the directors shall not be elected on the day designated in the by-laws, or by law, the corporation shall not for that reason be dissolved; but every director shall continue to hold his office and discharge his duties until his successor has been elected.

Provisions in statutes and by-laws requiring the election of directors to be had on a specified day are directory, and the election, if not held on the regular day, may be held at a later day, and the directors then chosen, if there be no other irregularity, will be directors *de jure*. *Beardsley v. Johnson*, 121 N. Y. 224; 24 N. E. Rep. 380; 30 N. Y. St. Rep. 691 (1890).

The provision of a statute requiring an election not held on a regular day to be held within a certain time thereafter is directory. *Vadenburgh v. Broadway, etc., R. R. Co.*, 29 Hun, 348 (1883).

**Mode of calling special election of directors.**

§ 24. If the election has not been held on the day so designated, the directors shall forthwith call a meeting of the members of the corporation for the purpose of electing directors, of which meeting notice shall be given in the same manner as of the annual meeting for the election of the directors.

If such meeting shall not be so called within one month, or, if held, shall result in a failure to elect directors, any member of the corporation may call a meeting for the purpose of electing directors by publishing a notice of the time and place of holding such meeting at least once in each week for two successive weeks, immediately preceding the election, in a newspaper published in the county where the election is to be held and in such other manner as may be prescribed in the by-laws for the publication of notice of the annual meeting, and by serving upon each member, either personally or by mail, directed to him at his last known post-office address, a copy of such notice at least two weeks before the meeting.

Notice of election of directors. *Stock Corp. L.*, § 20, post. By-laws regulating election to be published, etc. *Gen. Corp. L.*, § 11, subd. 5, ante.

**Mode of conducting special elections of directors.**

§ 25. Such meeting shall be held at the office of the corporation, or if it has none, at the place in this State where its principal business has been transacted, or if access to such office or place is denied or cannot be had, at some other place in the city, village or town where such office or place is or was located.

At such meeting the members attending shall constitute a quorum. They may elect inspectors of election and directors and

adopt by-laws providing for future annual meetings and election of directors, if the corporation has no such by-laws, and transact any other business which may be transacted at an annual meeting of the members of the corporation.

Qualification of voters, etc. §§ 20, 21, ante. Inspectors, election and oath. *Stock Corp. L.*, § 28, post.

**Qualification of voters and canvass of votes at special elections.**

§ 26. In the absence at such meeting of the books of the corporation showing who are members thereof, each person, before voting, shall present his sworn statement setting forth that he is a member of the corporation; and if a stock corporation, the number of shares of stock owned by him and standing in his name on the books of the corporation, and, if known to him, the whole number of shares of stock of the corporation outstanding. On filing such statement, he may vote as a member of the corporation; and if a stock corporation, he may vote on the shares of stock appearing in such statement to be owned by him and standing in his name on the books of the corporation.

The inspectors shall return and file such statements, with a certificate of the result of the election, verified by them, in the office of the clerk of the county in which such election is held, and the persons so elected shall be the directors of the corporation.

Transfer books. *Stock Corp. L.*, § 29, post. Certificate of election. *Stock Corp. L.*, § 28, post.

**Powers of supreme court respecting elections.**

§ 27. The supreme court shall, upon the application of any person or corporation aggrieved by or complaining of any election of any corporation or any proceeding, act or matter touching the same, upon notice thereof to the adverse party, or to those to be affected thereby, forthwith and in a summary way, hear the affidavits, proofs and allegations of the parties, or otherwise inquire into the matters or causes of complaint, and establish the election or order a new election, or make such order and give such relief as right and justice may require.

The provisions of this section are not in conflict with the statutory right to a trial by jury. *Matter of Newcomb*, 42 N. Y. St. Rep. 442; 18 N. Y. Supp. 16 (1891).

It does not affect the right of a stockholder to petition in a summary proceeding to establish the election of officers that he joined the corporation as one of the petitioners without authority. *Matter of Argus Co.*, 138 N. Y. 557; 34 N. E. Rep. 388; 53 N. Y. St. Rep. 270 (1893).

This section only authorizes an application to the court to establish or set aside a corporate

election in a summary way, and not by mandamus. *People ex rel. Pritzel v. Simonson*, 61 Hun, 338; 40 N. Y. St. Rep. 682 (1891).

There is nothing in this section which authorizes the court to compel the inspectors of election to count votes which they have refused, although they may have acted erroneously. The only relief which can be offered in such cases, is to order a new election if justice requires it. *Id.*

Where at a corporate election two ballots were cast, each containing complainant's name printed thereon and the respondent's name written, the two ballots should be rejected, and where the rejection of the ballots resulted in neither receiving a majority of the votes, a new election was properly had. *People ex rel. Thorn v. Pangburn*, 3 App. Div. 456; 73 N. Y. St. Rep. 711; 38 N. Y. Supp. 217 (1896).

The receipt of illegal votes at the election of officers of a corporation in favor of a candidate who has also received a majority of the legal votes, does not defeat his election. *Matter of Argus Co.*, 138 N. Y. 557; 34 N. E. Rep. 388; 53 N. Y. St. Rep. 270 (1893).

The fact that duly qualified persons were allowed by keeping the polls open, to vote after the time fixed for closing had expired, does not of itself vitiate the election of corporate officers. *Rudolph v. Southern Beneficial League*, 23 Abb. N. C. 190 (1889).

A person who is not a stockholder at the time of a corporate election cannot apply for a new election. *Matter of Syracuse, Chen. & N. Y. R. R. Co.*, 91 N. Y. 1 (1883).

#### Stay of proceedings in actions collusively brought.

§ 28. If an action is brought against a corporation by the procurement or default of its directors, or any of them, to enforce any claim or obligation declared void by law, or to which the corporation has a valid defense, and such action is in the interest or for the benefit of any director, and the corporation has by his connivance made default in such action, or consented to the validity of such claim or obligation, any member of the corporation may apply to the supreme court, upon affidavit, setting forth the facts, for a stay of proceedings in such action, and on proof of the facts in such further manner and upon such notice as the court may direct, it may stay such proceedings or set aside and vacate the same, or grant such other relief as may seem proper, and which will not injuriously affect an innocent party, who, without notice of such wrongdoing and for a valuable consideration, has acquired rights under such proceedings.

In a proceeding instituted to set aside judgment against a corporation, the complainant must show that the actions brought were instituted in the interest or for the benefit of a director personally, and it is not enough that the interests were of the director's wife. *Matter of Gardner*, 86 Hun, 30 (1895).

#### Quorum of directors and powers of majority.

§ 29. The affairs of every corporation shall be managed by its board of directors at least two of whom shall be residents of this State. Unless otherwise provided by law a majority of the board of directors of a corporation at a meeting duly assembled shall be necessary to constitute a quorum for the transaction of business, and the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors. Subject to the by-laws, if any, adopted by the members of a corporation, the directors may make necessary by-laws of the corporation.

Members may make by-laws controlling directors. *Gen. Corp. L.*, § 11, subd. 5, ante. Effect of failure by directors to adopt certain by-laws, where members do not. *Stock Corp. L.*, § 22, post. Qualification of directors. *Stock Corp. L.*, § 20, post. Quorum and powers of majority. § 39, post.

#### Corporation acts through its directors.

A corporation acts through its board of directors and unless expressly required by statute the assent of the stockholders to a corporate act is not necessary. *Beveridge v. N. Y. Elevated R. R. Co.*, 112 N. Y. 1; 20 N. Y. St. Rep. 962 (1889).

#### What directors undertake.

The directors of a corporation, although their services are gratuitous, undertake to exercise the ordinary skill and judgment requisite for the discharge of their trust, the degree of care being dependent upon the subject to which it is applied. *Hun v. Carey*, 82 N. Y. 65 (1880).

#### Powers of majority of stockholders and directors.

While a majority of stockholders can control a company's business, yet in so doing they take upon themselves the duty of diligence and good faith, and cannot manipulate the business in their own interests to the injury of the other corporators. *Meyer v. Staten Island R. R. Co.*, 7 N. Y. St. Rep. 245 (1887).

An action may be maintained by a minority stockholder to restrain the officers of a corporation from raising the salaries such an amount as to freeze him out. *Ziegler v. Hoagland*, 52 Hun, 385 (1889).

Where an action of the majority is plainly a fraud upon the minority, and the directors have acted with and formed part of the majority, the minority shareholders may enjoin such action. *Gamble v. Queens County Water-Works Co.*, 123 N. Y. 91; 25 N. E. Rep. 201; 33 N. Y. St. Rep. 88 (1890).

#### Trust relation.

One cannot stand in the attitude of selling as owner and purchasing as trustee. The law permits no one to act in such inconsistent relation.



It does not stop to inquire whether the contract or transaction was fair or unfair. It stops the inquiry when the relation is disclosed and sets aside the transaction or refuses to enforce it, at the instance of the party whom the fiduciary undertook to represent, without undertaking to deal with the question of abstract justice in the particular case. *Munson v. Syracuse, Geneva & Corning R. R. Co.*, 103 N. Y. 58; 8 N. E. Rep. 355; 3 N. Y. St. Rep. 31 (1886).

The rule which prevents a director from using his position to his personal benefit extends to all transactions where the individual personal interest may be brought into conflict with the fiduciary relation, without regard as to whether there was fraud or good intention, but it is generally limited in its operation to rendering transactions voidable, and delay in moving may be deemed equivalent to ratification. *Barr v. N. Y., Lake Erie, etc., R. R. Co.*, 125 N. Y. 263; 26 N. E. Rep. 145; 34 N. Y. St. Rep. 743 (1891).

The relation of a trustee to a corporation is fiduciary in its nature and precludes him from using or permitting the use of his power or authority for his personal benefit. *Rudd v. Robinson*, 54 Hun, 339; 27 N. Y. St. Rep. 98 (1889).

A director is a trustee of a corporation and as such must act with entire fidelity to its interests, and such fidelity is not presumed when the private interest of the officer is in conflict with that of the corporation. *MacNaughton v. Osgood*, 41 Hun, 109 (1886).

An agreement by three of five directors holding a majority of stock that they would so vote the stock held by them so long as they should be stockholders, and which otherwise provided for the election of directors and the salaries of officers, was held void as a violation of trust. *Snow v. Church*, 13 App. Div. 108 (1897).

Directors without assent of stockholders can compromise an existing claim, but not so as to make new agreements or radically modify previous agreements. *Metropolitan R. R. Co. v. Marshall R. R. Co.*, 14 Abb. N. C. 103, 131 (1884).

### Dealings with corporation.

A corporation may deal with a trustee. *Nathan v. Whitehall*, 67 Hun, 398; 57 N. Y. St. Rep. 457 (1893).

A trustee may contract with a corporation for the sale to it of property owned by him so long as he does not, while acting in his own interest on the one side, also act on the other in the capacity of trustee. *Gamble v. Queens County Water-Works Co.*, 123 N. Y. 91; 25 N. E. Rep. 201; 33 N. Y. St. Rep. 68 (1890).

A contract made with a director with the full knowledge of its terms assented to by the shareholders and directors is binding on the corporation. *Matter of Commissioners of State Reservation*, 122 N. Y. 177; 33 N. Y. St. Rep. 452 (1890).

A pledge by a corporation of its treasury stock with a director for a loan actually made to it by him is valid. *Kinman v. Fisk*, 83 Hun, 494; 65 N. Y. St. Rep. 75 (1894).

A director of a corporation dealing with it is bound to explain the transaction and show that the same was fair and that no undue advantage

has been taken of his position. *Sage v. Culver*, 147 N. Y. 241; 41 N. E. Rep. 513; 69 N. Y. St. Rep. 524 (1895).

A contract made by a director with a corporation is not void, but voidable if the director fails to show that it was honest and fair. *Strobel v. Brown*, 16 Misc. Rep. 657 (1895).

A contract made by the directors of a corporation with one of their number is voidable at the election of the corporation. *Central Trust Co. v. N. Y. City & Northern R. R. Co.*, 18 Abb. N. C. 381 (1886).

The transaction of a director in the matter in which he is interested is voidable only at the election of the parties in interest. *Keans v. N. Y. & College Point Ferry Co.*, 17 Misc. Rep. 242 (1890).

Contracts made by corporate directors with themselves are only voidable at the election of those affected by the fraud. *Skinner v. Smith*, 134 N. Y. 240; 31 N. E. Rep. 911; 47 N. Y. St. Rep. 528 (1892).

A trustee as such should not purchase property in which he has an individual interest. The law does not stop to inquire whether the transaction was fair or unfair, but sets aside the transaction or refuses to enforce it, at the instance of the cestui que trust. *Munson v. Syracuse, Geneva & Corning R. R. Co.*, 103 N. Y. 58; 3 N. Y. St. Rep. 31; 8 N. E. Rep. 355 (1886).

It seems that where a trustee owns an interest in a contract made with the company, it may permit a performance, and then make such trustee account to it for his profits, or the stockholders can bring a suit to nullify the contract or restraining the performance thereof, or compelling him to resign his office as director, or give up the contract. *Barnes v. Brown*, 80 N. Y. 527 (1880).

A director cannot act upon a resolution transferring stock to himself, and the corporation may repudiate the transaction. *U. S. Ice Co. v. Reed*, 2 How. Pr. (N. S.) 253 (1885).

A trustee, selling as such, cannot buy in for his own benefit, nor bid for another. *Welch v. Woodruff*, 20 N. Y. St. Rep. 840 (1889).

Where an order made in a people's action to sequester the property of a savings bank, directs the trustees to sell the real property, and provides that either or any of them may become purchasers at the sale, and the sale is affirmed by the court, the title is good as against the world. *Webster v. Kings County Trust Co.*, 145 N. Y. 275; 39 N. E. Rep. 964; 64 N. Y. St. Rep. 698 (1895).

Where a director assumes to purchase property in which the company has such an interest that he is in equity disqualified from purchasing it upon his own account or from holding it as against the company, nevertheless the legal title vests in him and the property cannot be taken from his possession under an execution against the corporation. *Cornell v. Clark*, 104 N. Y. 451 (1887).

Where a director is the execution creditor of a corporation he may sell its property under his execution. *Hoyle v. Plattsburg & Montreal R. R. Co.*, 54 N. Y. 314; rev'g 51 Barb. 45 (1873).

## General Corporation Law — § 29.

A director of a corporation occupies a fiduciary position, and cannot deal in his own behalf in respect to matters involving the trust, but in the absence of proof of bad faith his acts cannot be avoided by the corporation without restoring to him what the corporation has received. *Duncomb v. N. Y., Housatonic & N. R. R. Co.*, 84 N. Y. 190 (1881).

Directors who are also all the stockholders may, there being no creditors, assign to themselves the entire property of the corporation. *Skinner v. Smith*, 56 Hun, 437; 31 N. Y. St. Rep. 448 (1890); *aff'd*, 134 N. Y. 240; 47 N. Y. St. Rep. 528; 31 N. E. Rep. 911.

The fact that the president of a corporation was one of five directors who voted a salary to the president does not render the contract void, the transaction of a trust in which he is interested being voidable only at the election of the parties in interest. *Keans v. N. Y. & College Point Ferry Co.*, 17 Misc. Rep. 272 (1896). But see *Ashley v. Kinnan*, 18 N. Y. St. Rep. 291 (1888); *Kelsey v. Sergeant*, 40 Hun, 150 (1880).

**May purchase stock and bonds.**

A director of a corporation is not disqualified from purchasing its outstanding unmatured obligations at less than its face value, and enforcing them at maturity as against the corporation. *Seymour v. Spring Forest Cemetery Association*, 144 N. Y. 333; 39 N. E. Rep. 365; 63 N. Y. St. Rep. 672 (1895).

The director of a corporation may be the lawful holder of its bonds, and although the corporation may avoid the bonds if he buys them of it below par, yet a purchaser from him is not put on inquiry or charged with notice from the fact that he purchases from a director. *Duncomb v. N. Y., Housatonic & N. R. R. Co.*, 84 N. Y. 190 (1881).

The rule that trustees cannot deal with a corporation does not apply to the purchase of duly issued stock from a stockholder. *Stark v. Soule*, 9 N. Y. St. Rep. 555; 8 N. Y. Supp. 947 (1887).

It seems that a director of a corporation may purchase the property at a sale under foreclosure for default in the payment of its bonds. *Harpending v. Munson*, 91 N. Y. 650 (1883).

A director of a society was the mortgagee in a mortgage given by it and the purchaser at the foreclosure; held, in the absence of fraud, that the sale was valid. *Preston v. Loughran*, 58 Hun, 210; 34 N. Y. St. Rep. 391 (1890).

**Dealings with another corporation in which they are directors.**

A contract made by directors of a corporation with another corporation of which they are also directors, is voidable by the corporation, but not by a stockholder unless so clearly against his interests as to amount to a substantial and fraudulent violation of his rights. *Hart v. Ogdensburgh & Lake Champlain R. R. Co.*, 89 Hun, 316 (1895); *Burden v. Burden*, 8 App. Div. 160 (1896); *Wallace v. Long Island R. R. Co.*, 12 Hun, 460 (1877).

Where a note is given for a corporate debt and discounted by a bank of which a corporate director is also director, but such director in no

way acted for the bank in the matter, the corporation is liable. *Casco Nat. Bank v. Clark*, 139 N. Y. 307; 34 N. E. Rep. 908; 54 N. Y. St. Rep. 590 (1893); *Merchants' Nat. Bank v. Clark*, 139 N. Y. 314; 34 N. E. Rep. 910; 54 N. Y. St. Rep. 593 (1893).

**Personal liability.**

The manner in which agents of corporations must execute contracts in order to avoid personal liability is in general the same as that of agents of natural persons, and if the agency can be got at from the entire contract the corporation and not the individual is bound. *Lake Shore Nat. Bank v. Butler Colliery Co.*, 51 Hun, 63; 20 N. Y. St. Rep. 688 (1889).

A director who actually issues or sanctions the circulation of a false prospectus, the natural tendency of which is to mislead and deceive the community and induce the public to purchase its stock, is responsible to those who are injured thereby. *Morgan v. Skidy*, 62 N. Y. 319 (1875).

A corporation has a remedy at law against its directors for unauthorized acts. *Bloom v. Nat. United Benefit Savings, etc., Co.*, 81 Hun, 120; 68 N. Y. St. Rep. 657 (1894).

The mere fact of being a director and stockholder is not sufficient to make a person liable for fraud of other directors or members of a corporation. *Arthur v. Griswold*, 55 N. Y. 400 (1874).

**Charged with knowledge.**

Directors are charged with knowledge of the entries in the books of a corporation made in the ordinary conduct of its business. *Hanover Nat. Bank v. American Dock & Trust Co.*, 148 N. Y. 612; 43 N. E. Rep. 72 (1896).

**Meetings.**

Where the powers of a corporation are to be exercised by a particular body or number of persons, such body is not duly assembled as a board, unless each person constituting it is present, or each person has had notice and a majority is present, when the decision of the majority is valid as a corporate act. *Round Lake Association v. Kellogg*, 47 N. Y. St. Rep. 668; 20 N. Y. Supp. 261 (1892); *aff'd*, 141 N. Y. 348; 36 N. E. Rep. 326.

If neither the statute, charter or by-laws provide for giving notice of directors' meetings, actual notice to each director is necessary. *People ex rel. Swinburne v. Albany Medical College*, 26 Hun, 348 (1882).

**Expulsion of members.**

Where a corporation's by-laws provide that a special meeting of the trustees shall be called on notice in writing to each member of the board, a member can only be expelled where such notice has been given. *People ex rel. Stephens v. Greenwood Lake Association*, 44 N. Y. St. Rep. 914 (1892).

**Protection of acting directors.**

A court may enjoin persons claiming to be the de jure trustees of a corporation, from interfering

## General Corporation Law — §§ 30-32.

with the possession and control of de facto trustees, until the title of the liable claimants can be properly adjudicated. *Model Building & Loan Association v. Patterson*, 12 Misc. Rep. 400; 68 N. Y. St. Rep. 120 (1895).

**Compensation.**

A director of a corporation, while not entitled to pay for his services as such, is entitled to compensation for services beyond the range of his official duties, upon an actual employment by the company. *Jackson v. N. Y. C. R. R. Co.*, 2 T. & C. 653 (1874); aff'd, 58 N. Y. 623; *Talcott v. Olecott Mfg. Co.*, 11 Week. Dig. 141 (1880).

The mere fact that a director and officer of a corporation renders services beyond those which are defined in the by-laws, will not raise the presumption of promise of payment by the corporation. *Gill v. N. Y. Cap Co.*, 48 Hun, 524 (1888).

**Resignation.**

Where a director sells out his stock in a corporation and ceases to act in its management or at meetings of its directors, a formal resignation is not necessary to relieve him from responsibility. *Sturges v. Vanderbilt*, 73 N. Y. 384 (1878).

A director cannot affect his resignation by merely stating to an officer of a corporation that he has nothing further to do with the company. So held in an action to enforce a statutory liability for failure to file an annual report. *Chemical Nat. Bank v. Colwell*, 29 N. Y. St. Rep. 726 (1890).

**Directors as trustees in case of dissolution.**

§ 30. Upon the dissolution of any corporation, its directors, unless other persons shall be appointed by the legislature, or by some court of competent jurisdiction, shall be the trustees of its creditors, stockholders or members, and shall have full power to settle its affairs, collect and pay outstanding debts, and divide among the persons entitled thereto the money and other property remaining after payment of debts and necessary expenses.

Such trustees shall have authority to sue for and recover the debts and property of the corporation, by their name as such trustees, and shall jointly and severally be personally liable to its creditors, stockholders or members, to the extent of its property and effects that shall come into their hands.

For proceedings for voluntary dissolution, without intervention of court. *Stock Corp. L.*, § 57, post. For dissolution by action brought by the people, a creditor or stockholder, and proceedings for voluntary dissolution generally, see "Actions and proceedings relating to corporations," post. A receiver appointed by a competent court, supercedes the directors. See "Receivers of Corporations," post. Business corporation dissolved if one-half of capital stock not paid in within one year. *Bus. Corp. L.*, § 5, post.

**Forfeiture for nonuser.**

§ 31. If any corporation, except a railroad, turnpike, plankroad or bridge corporation, shall not organize and commence the transaction of its business or undertake the discharge of its corporate duties within two years from the date of its incorporation, its corporate powers shall cease.

For decisions as to effect of language of this character, see *Code Civ. Pro.*, § 1797, post, "Actions and proceedings relating to corporations."

**Extension of corporate existence.**

§ 32. Any domestic corporation at any time within three years before the expiration thereof, may extend the term of its existence beyond the time specified in its original certificate of incorporation, or by law, or in any certificate of extension of corporate existence, by the consent of the stockholders owning two-thirds in amount of its capital stock, if not a stock corporation, by the consent of two-thirds of its members, in and by a certificate signed and acknowledged by them and filed in the offices in which the original certificates of its incorporation were filed, if at all, and, if not, then in the offices where certificates of incorporation are now required by law to be filed, and the officers with whom the same may be filed shall thereupon record them in the books kept in their respective offices for the record of such certificates, and make a memorandum of such record in the margin of the original certificate in such book, if any, and thereupon the time of existence of such corporation shall be extended, as designated in such certificate, for a term not exceeding the term of\* which it was incorporated in the first instance. If the term of existence of any domestic corporation shall have expired and it shall be made satisfactorily to appear to the supreme court that such corporation was legally organized pursuant to any law of this State, and that through mistake it shall have issued its bonds payable at a date beyond the date fixed in its charter or certificate of incorporation for the expiration of its corporate existence, and such bonds shall be unmatured and unpaid, the supreme court may, upon the application of any person interested and upon such notice to such other parties as the court may require, by order, authorize the filing and recording of a certificate reviving the existence of such corporation, upon such conditions and with such limitations as such order shall specify, and extending such corporate existence for a term not exceeding the term for which it was originally incorporated. Upon filing and recording such certificate in the same manner as certificates of extension of corporate existence duly issued before the expiration of the existence of a domestic corporation is author-

\* So in original



## General Corporation Law — §§ 33-36.

ized by law to be filed and recorded, such corporate existence shall be revived and extended in pursuance of the terms of such order, but such revival and extension shall not affect any litigation commenced after such expiration and pending at the time of such revival.

If a corporation formed under or subject to the banking law, such certificate shall not be filed or recorded unless it shall have indorsed thereon the written approval of the superintendent of banks; or, if an insurance corporation, unless it shall have indorsed thereon the written approval of the superintendent of insurance; and, if a turnpike or bridge corporation, it shall not be filed unless it shall have indorsed thereon or annexed thereto a certified copy of a resolution of the board of supervisors of each county in which such turnpike or bridge is located, approving of and authorizing such extension.

Every corporation extending its corporate existence under this chapter or under any general law of the State shall thereafter be subject to the provisions of this chapter and of such general law, notwithstanding any special provisions in its chapter, and shall thereafter be deemed to be incorporated under the general laws of the State relating to the incorporation of a corporation for the purpose of carrying on the business in which it is engaged, and shall be subject to the provisions of such laws.

**Conflicting corporate laws.**

§ 33. If in any corporate law there is or shall be any provision in conflict with any provisions of this chapter or of the stock corporation law, the provisions so conflicting shall prevail, and the provisions of this chapter or of the stock corporation law with which it conflicts shall not apply in such case. If in any such law there is or shall be a provision relating to a matter embraced in this chapter or in the stock corporation law, but not in conflict with it, such provisions in such other law shall be deemed to be in addition to the provision in this chapter or in the stock corporation law relating to the same subject-matter, and both provisions shall, in such case, be applicable.

"Corporate law" defined. § 3, ante. See note to General Corp. L., § 1.

**Laws repealed.**

§ 34. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed. Such repeal shall not revive a law repealed by any law hereby repealed, but shall include all laws amendatory of the laws hereby repealed.

The General, Stock, Business, Transportation and Railroad Corporation Laws were enacted in 1890, as chapters 563, 564, 565, 566 and 567 of the

laws of that year. The General, Stock and Business Corporations Laws were amended throughout and re-enacted in 1892. In such re-enactment the repealing schedules of the Stock and Business Corporation Laws were omitted at the end of their chapters respectively, but combined with the laws repealed by the General Corporation Law of 1890; the Railroad Law and the Transportation Corporations Law, and made a part of the repealing schedule of the General Corporation Law of 1892. Certain acts, which were repealed in 1890, were omitted from the consolidated schedules.

**Saving clause.**

§ 35. The repeal of a law or any part of it specified in the annexed schedule shall not affect or impair any act done, or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to May 1, 1891, under or by virtue of any law so repealed, but the same may be asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such law had not been repealed. All actions and proceedings, civil or criminal, commenced under or by virtue of the laws so repealed, and pending on April 30, 1891, may be prosecuted and defended to final effect in the same manner as they might under the laws then existing, unless it shall be otherwise specially provided by law.

Statutory Construction L., § 31, to same effect.

**Construction.**

§ 36. The provisions of this chapter, and of the stock corporation law, the railroad law, the transportation corporations law, and the business corporations law, so far as they are substantially the same as those of laws existing on April 30, 1891, shall be construed as a continuation of such laws modified or amended according to the language employed in this chapter, or in the stock corporation law, the railroad law, the transportation corporations law, or the business corporations law, and not as new enactments.

Reference in laws not repealed to provisions of laws incorporated into the general laws hereinbefore enumerated and repealed, shall be construed as applying to the provisions so incorporated.

Nothing in this chapter or in the other general laws hereinbefore specified shall be construed to amend or repeal any provision of the Criminal or Penal Code or to impair any right or liability which any existing corporation, its officers, directors, stockholders or creditors may have or be subject to or which any such corporation, other than a railroad corporation, had or was subject to on April 30, 1891, by virtue of any special act of the legislature creating such corporation or creating or defining any such right or liability, unless such special act is repealed by this chapter.

Statutory Construction L., §§ 31-33, to same effect.

Law revived.

§ 37. Chapter three hundred of the laws of eighteen hundred and fifty-five, entitled "An act to incorporate the Baptist Historical Society of the city of New York," which was inadvertently repealed by the transportation corporation law, is revived and re-enacted, and shall be of the same force and effect as if it had not been repealed.

When notice or lapse of time unnecessary.

§ 38. Whenever under the provisions of any of the corporate laws a corporation is authorized to take any action after notice to its members or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of any period of time, if such action be authorized or approved, and such requirements be waived in writing by every member of such corporation, or by his attorney thereunto authorized. (Added L. 1895, ch. 672.)

It should be observed that this section only permits of waiver of notice to "members." Rights of creditors cannot be affected.]

As to acts of directors.

§ 39. Whenever, under the provisions of any of the corporate laws, a corporation is

authorized to take any action by the agreement or action of its directors, managers or trustees, such agreement or action may be taken by such directors, regularly convened as a board, and acting by a majority of a quorum, except when otherwise expressly required by law or the by-laws of the corporation and any such agreement shall be executed in behalf of the corporation by such officers as shall be designated by the board of directors, managers or trustees. (Added by L. 1895, ch. 672.)

Quorum of directors. § 29, ante.

Alteration and repeal of charter.

§ 40. The charter of every corporation shall be subject to alteration, suspension and repeal, in the discretion of the legislature. (Added by L. 1895, ch. 672.)

The Revised Statutes of 1830 contained this provision, which was inserted in the Constitution of 1846. The provision of the Revised Statutes was repealed in 1890. It seems by this repeal, that the legislature relinquished its right to alter, amend or repeal charters of corporations granted between 1830 and the Constitution of 1846. It was, therefore, deemed advisable to re-enact it in 1895, although the same provision is in the Constitution. Art. VIII, § 1, ante.

Schedule of Laws Repealed.

REVISED STATUTES. Part I, chapter 18. All.

LAWS OF	Chapter.	Sections.
1811.....	67.....	All.
1815.....	47.....	All.
1815.....	202.....	All.
1816.....	58.....	All.
1817.....	223.....	All.
1818.....	67.....	All.
1819.....	102.....	All.
1821.....	14.....	All.
1822.....	213.....	All.
1836.....	284.....	All.
1836.....	316.....	All.
1838.....	160.....	All.
1838.....	161.....	All.
1838.....	262.....	All.
1839.....	218.....	All.
1842.....	165.....	All.
1846.....	155.....	All.
1846.....	215.....	17, 18.
1847.....	100.....	3, 4.
1847.....	210.....	All.
1847.....	222.....	All.
1847.....	270.....	All.
1847.....	272.....	All.
1847.....	287.....	All.
1847.....	398.....	All.
1847.....	404.....	All.
1847.....	405.....	All.
1848.....	37.....	All.
1848.....	40.....	All.
1848.....	45.....	All.
1848.....	259.....	All.

Schedule of Laws Repealed — (Cont'd).

LAWS OF	Chapter.	Sections.
1848.....	265.....	All.
1848.....	360.....	All.
1849.....	250.....	All.
1849.....	362.....	All.
1850.....	71.....	All.
1850.....	140.....	All.
1851.....	14.....	All.
1851.....	19.....	All.
1851.....	98.....	All.
1851.....	107.....	All.
1851.....	487.....	All.
1851.....	497.....	All.
1852.....	228.....	All.
1852.....	372.....	All.
1853.....	53.....	All.
1853.....	117.....	All.
1853.....	124.....	All.
1853.....	135.....	All.
1853.....	245.....	All.
1853.....	333.....	All.
1853.....	471.....	1, 2, 4.
1853.....	481.....	All.
1853.....	502.....	All.
1853.....	626.....	All.
1854.....	3.....	All.
1854.....	87.....	All.
1854.....	140.....	All.
1854.....	201.....	All.
1854.....	232.....	All.
1854.....	269.....	All.
1854.....	282.....	All.
1854.....	312.....	All.
1855.....	301.....	All.

## Schedule of Laws Repealed.

## Schedule of Laws Repealed — (Cont'd).

LAWS OF	Chapter.	Sections.
1855.....	302.....	All.
1855.....	390.....	All.
1855.....	478.....	All.
1855.....	485.....	All.
1855.....	495.....	All.
1855.....	546.....	All.
1855.....	559.....	All.
1856.....	65.....	All.
1857.....	29.....	All.
1857.....	83.....	All.
1857.....	185.....	All.
1857.....	202.....	All.
1857.....	262.....	All.
1857.....	444.....	All.
1857.....	546.....	All.
1857.....	558.....	All.
1857.....	643.....	All.
1857.....	776.....	All.
1858.....	10.....	All.
1858.....	125.....	All.
1859.....	209.....	All.
1859.....	311.....	All.
1859.....	455.....	All.
1860.....	116.....	All.
1860.....	269.....	All.
1860.....	523.....	All.
1861.....	149.....	All.
1861.....	170.....	All.
1861.....	215.....	All.
1861.....	238.....	All.
1862.....	205.....	All.
1862.....	248.....	All.
1862.....	425.....	All.
1862.....	438.....	All.
1862.....	449.....	All.
1862.....	472.....	All.
1863.....	63.....	All.
1863.....	134.....	All.
1863.....	346.....	All.
1864.....	85.....	All.
1864.....	337.....	All.
1864.....	517.....	All.
1864.....	582.....	All.
1865.....	234.....	All.
1865.....	246.....	All.
1865.....	307.....	All.
1865.....	691.....	All.
1865.....	780.....	All.
1866.....	73.....	All.
1866.....	259.....	All.
1866.....	322.....	All.
1866.....	371.....	All.
1866.....	697.....	All.
1866.....	780.....	All.
1866.....	799.....	All.
1866.....	838.....	All.
1867.....	12.....	All.
1867.....	49.....	All.
1867.....	248.....	All.
1867.....	254.....	All.
1867.....	419.....	All.
1867.....	480.....	All.
1867.....	509.....	All.
1867.....	775.....	All.
1867.....	906.....	All.

## Schedule of Laws Repealed — (Cont'd).

LAWS OF	Chapter.	Sections.
1867.....	937.....	All.
1867.....	960.....	All.
1867.....	974.....	All.
1868.....	253.....	All.
1868.....	290.....	All.
1868.....	573.....	All.
1868.....	781.....	All.
1869.....	234.....	All.
1869.....	237.....	All.
1869.....	605.....	All.
1869.....	706.....	All.
1869.....	844.....	All.
1869.....	917.....	All.
1870.....	124.....	All.
1870.....	135.....	All.
1870.....	322.....	All.
1870.....	443.....	All.
1870.....	568.....	All.
1870.....	773.....	All.
1871.....	95.....	All.
1871.....	481.....	All.
1871.....	535.....	All.
1871.....	560.....	All.
1871.....	657.....	All.
1871.....	669.....	All.
1871.....	697.....	All.
1871.....	883.....	All.
1872.....	81.....	All.
1872.....	128.....	All.
1872.....	146.....	All.
1872.....	248.....	All.
1872.....	283.....	All.
1872.....	350.....	All.
1872.....	374.....	All.
1872.....	426.....	All.
1872.....	609.....	All.
1872.....	611.....	All.
1872.....	779.....	All.
1872.....	780.....	All.
1872.....	820.....	All, except 20.
1872.....	829.....	All.
1872.....	848.....	All.
1873.....	151.....	All.
1873.....	352.....	All.
1873.....	432.....	All.
1873.....	440.....	All.
1873.....	469.....	All.
1873.....	616.....	All.
1873.....	710.....	All.
1873.....	737.....	All.
1873.....	814.....	All.
1874.....	76.....	All.
1874.....	143.....	All.
1874.....	149.....	All.
1874.....	240.....	All.
1874.....	288.....	All.
1874.....	430.....	All.
1875.....	4.....	All.
1875.....	58.....	All.
1875.....	88.....	All.
1875.....	108.....	All.
1875.....	113.....	All.
1875.....	119.....	All.
1875.....	120.....	All.



## Schedule of Laws Repealed.

## Schedule of Laws Repealed — (Cont'd).

LAWS OF	Chapter.	Sections.
1875.....	159.....	All.
1875.....	193.....	All.
1875.....	256.....	All.
1875.....	319.....	All.
1875.....	365.....	All.
1875.....	445.....	All.
1875.....	510.....	All.
1875.....	586.....	All.
1875.....	598.....	All.
1875.....	606.....	All.
1875.....	611.....	All.
1876.....	77.....	All.
1876.....	135.....	All.
1876.....	198.....	All.
1876.....	280.....	All.
1876.....	358.....	All.
1876.....	373.....	All.
1876.....	415.....	All.
1876.....	435.....	All.
1876.....	446.....	All.
1877.....	103.....	All.
1877.....	158.....	All.
1877.....	164.....	All.
1877.....	171.....	All.
1877.....	224.....	All.
1877.....	266.....	All.
1877.....	374.....	All.
1878.....	61.....	All.
1878.....	121.....	All.
1878.....	163.....	All.
1878.....	203.....	All.
1878.....	210.....	All.
1878.....	261.....	All.
1878.....	264.....	All.
1878.....	316.....	All.
1878.....	334.....	All.
1878.....	394.....	All.
1879.....	214.....	All.
1879.....	253.....	All.
1879.....	290.....	All.
1879.....	293.....	All.
1879.....	350.....	All.
1879.....	377.....	All.
1879.....	393.....	All.
1879.....	395.....	All.
1879.....	413.....	All.
1879.....	415.....	All.
1879.....	441.....	All.
1879.....	503.....	All.
1879.....	505.....	All.
1879.....	512.....	All.
1879.....	541.....	All.
1880.....	5.....	All.
1880.....	85.....	All.
1880.....	90.....	All.
1880.....	94.....	All.
1880.....	113.....	All.
1880.....	133.....	All.
1880.....	155.....	All.
1880.....	182.....	All.
1880.....	187.....	All.
1880.....	223.....	All.
1880.....	225.....	All.
1880.....	241.....	All.
1880.....	254.....	All.

## Schedule of Laws Repealed — (Cont'd).

LAWS OF	Chapter.	Sections.
1880.....	263.....	All.
1880.....	267.....	All.
1880.....	349.....	All.
1880.....	415.....	All.
1880.....	417.....	All.
1880.....	484.....	All.
1880.....	510.....	All.
1880.....	575.....	All.
1880.....	582.....	All.
1880.....	583.....	All.
1880.....	585.....	All.
1881.....	22.....	All.
1881.....	58.....	All.
1881.....	77.....	All.
1881.....	117.....	All.
1881.....	148.....	All.
1881.....	213.....	All.
1881.....	232.....	All.
1881.....	295.....	All.
1881.....	296.....	All.
1881.....	311.....	All.
1881.....	313.....	All.
1881.....	321.....	All.
1881.....	337.....	All.
1881.....	338.....	All.
1881.....	351.....	All.
1881.....	399.....	All.
1881.....	422.....	All.
1881.....	464.....	All.
1881.....	468.....	All.
1881.....	470.....	All.
1881.....	472.....	All.
1881.....	485.....	All.
1881.....	551.....	All.
1881.....	589.....	All.
1881.....	649.....	All.
1881.....	650.....	All.
1881.....	674.....	All.
1881.....	685.....	All.
1882.....	73.....	All.
1882.....	82.....	All.
1882.....	140.....	All.
1882.....	273.....	All.
1882.....	289.....	All.
1882.....	290.....	All.
1882.....	306.....	All.
1882.....	309.....	All.
1882.....	349.....	All.
1882.....	353.....	All.
1882.....	393.....	All.
1882.....	405.....	All.
1883.....	46.....	All.
1883.....	71.....	All.
1883.....	102.....	All.
1883.....	216.....	All.
1883.....	232.....	All.
1883.....	237.....	All.
1883.....	238.....	All.
1883.....	240.....	All.
1883.....	287.....	All.
1883.....	323.....	All.
1883.....	361.....	All.
1883.....	381.....	All.
1883.....	382.....	All.
1883.....	384.....	All.

## Schedule of Laws Repealed.

## Schedule of Laws Repealed -- (Cont'd).

LAWS OF	Chapter.	Sections.
1883.....	386.....	All.
1883.....	387.....	All.
1883.....	388.....	All.
1883.....	409.....	All.
1883.....	482.....	All.
1883.....	483.....	All.
1883.....	497.....	All.
1884.....	140.....	All.
1884.....	193.....	All.
1884.....	208.....	All.
1884.....	223.....	All.
1884.....	252.....	All.
1884.....	267.....	All.
1884.....	367.....	All.
1884.....	386.....	All.
1884.....	397.....	All.
1884.....	421.....	All.
1884.....	422.....	All.
1884.....	439.....	All.
1884.....	441.....	All.
1884.....	444.....	All.
1885.....	84.....	All.
1885.....	127.....	All.
1885.....	141.....	All.
1885.....	153.....	All.
1885.....	171.....	All.
1885.....	305.....	All.
1885.....	369.....	All.
1885.....	422.....	All.
1885.....	423.....	All.
1885.....	489.....	All.
1885.....	498.....	All.
1885.....	535.....	All.
1885.....	540.....	All.
1885.....	549.....	All.
1886.....	65.....	All.
1886.....	182.....	All.
1886.....	271.....	All.
1886.....	321.....	All.
1886.....	322.....	All.
1886.....	403.....	All.
1886.....	415.....	All.
1886.....	509.....	All.
1886.....	551.....	All.
1886.....	579.....	All.
1886.....	586.....	All.
1886.....	592.....	All.
1886.....	601.....	All.
1886.....	605.....	All.

## Schedule of Laws Repealed -- (Cont'd).

LAWS OF	Chapter.	Sections.
1886.....	634.....	All.
1886.....	642.....	All.
1887.....	450.....	All.
1887.....	486.....	All.
1887.....	536.....	All.
1887.....	570.....	All.
1887.....	616.....	All.
1887.....	622.....	All.
1887.....	724.....	All.
1888.....	189.....	All.
1888.....	306.....	All.
1888.....	313.....	All.
1888.....	359.....	All.
1888.....	394.....	All.
1888.....	447.....	All.
1888.....	462.....	All.
1888.....	513.....	All.
1888.....	514.....	All.
1888.....	519.....	All.
1888.....	560.....	All.
1889.....	57.....	All.
1889.....	76.....	All.
1889.....	78.....	All.
1889.....	236.....	All.
1889.....	242.....	All.
1889.....	281.....	All.
1889.....	332.....	All.
1889.....	369.....	All.
1889.....	426.....	All.
1889.....	519.....	All.
1889.....	524.....	All.
1889.....	531.....	All.
1889.....	532.....	All.
1889.....	564.....	All.
1890.....	23.....	All.
1890.....	98.....	All.
1890.....	119.....	All.
1890.....	193.....	All.
1890.....	292.....	All.
1890.....	416.....	All.
1890.....	421.....	All.
1890.....	483.....	All.
1890.....	497.....	All.
1890.....	505.....	All.
1890.....	508.....	All.
1890.....	543.....	All.
1891.....	57.....	All.
1891.....	287.....	All.
1892.....	2.....	All.

## PART III.

## THE STOCK CORPORATION LAW, AS AMENDED TO JANUARY 1, 1899.

(L. 1890, ch. 564.)

An Act in relation to stock corporations constituting chapter thirty-six of the general laws.

## CHAPTER XXXVI OF THE GENERAL LAWS.

## The Stock Corporation Law.

- Art. 1. General powers; reorganization. §§ 1-7.  
 2. Directors and officers; their election, duties and liabilities. §§ 20-33.  
 3. Stock; stockholders, their rights and liabilities. §§ 40-60.

## ARTICLE I.

## General Powers; Reorganization.

- Sec. 1. Short title, and application of chapter.  
 2. Power to borrow money and mortgage property.  
 3. Reorganization upon sale of corporate property and franchises.  
 4. Contents of plan or agreement.  
 5. Sale of property; possession of receiver and suits against him.  
 6. Assent of stockholders to plan of readjustment.  
 7. Combinations prohibited.

## Short title, and application of chapter.

Section 1. This chapter shall be known as the stock corporation law, but article one shall not apply to monied corporations.

See note to General Corporation Law, § 1, ante. The Stock Corporation Law was amended throughout and re-enacted by L. 1892, ch. 688, taking effect May 18, 1892.

The Stock Corporation Law does not affect rights and liabilities fixed before the statute took effect. *Close v. Potter*, 2 Misc. Rep. 1; 49 N. Y. St. Rep. 590 (1892).

## Power to borrow money and mortgage property.

§ 2. In addition to the powers conferred by the general corporation law, every stock corporation shall have power to borrow money or contract debts, when necessary for the transaction of its business, or for the exercise of its corporate rights, privileges or franchises, or for any other lawful purpose of its incorporation; and may issue and dis-

pose of its obligations for any amount so borrowed, and may mortgage its property and franchises to secure the payment of such obligations or of any debt contracted for the purposes herein specified; and the amount of the obligations issued and outstanding at any one time secured by such mortgages, excepting mortgages given as a consideration for the purchase of real estate, and mortgages authorized by contracts made prior to May first, eighteen hundred and ninety-one, shall not exceed the amount of its paid-up capital stock, or an amount equal to two-thirds of the value of its corporate property at the time of issuing the obligations secured by such mortgages, in case such two-thirds value shall be more than the amount of such paid-up capital stock. No such mortgages, except purchase-money mortgages, shall be issued without the consent of the stockholders owning at least two-thirds of\* the stock of the corporation, which consent shall be in writing and shall be filed and recorded in the office of the clerk or register of the county where it has its principal place of business, or shall be given by vote at a special meeting of the stockholders called for that purpose; and a certificate of the vote at such meeting, signed and sworn to by the chairman and secretary of such meeting, shall be filed and recorded as aforesaid. When authorized by such consent, the directors, under such regulations as they may adopt, may confer on the holder of any debt or obligation secured by such mortgage the right to convert the principal thereof, after two and not more than twelve years from the date of the mortgage, into stock of the corporation; and if the capital stock shall not be sufficient to meet the conversion when made, the stockholders shall, in the manner herein provided, authorize an increase of capital stock sufficient for that purpose.

Consideration for issue of bonds, § 42, post. Liability of directors for overissue of bonds. § 24, post. Corporation may guarantee bonds of another corporation. § 40, post. Payment by stockholder of mortgage debt pending foreclosure. § 49, post. Receiver may be appointed on foreclosure. Code Civ. Pro., § 1810. See post, "Receivers of Corporations." Power of railroad corporations to issue bonds. R. R. L., § 4, subd. 10; § 24 of Stock Corp. L. relating to overissue not to apply to railroads. R. R. L., § 23, as added by L. 1898, ch. 80.

\* So in original.



## Stock Corporation Law — § 3.

In order that a mortgage of the property of a manufacturing corporation be sustained, stockholders holding two-thirds of the stock must consent thereto and their consent be filed in the clerk's office. *Matter of Wendler Machine Co.*, 2 App. Div. 16; 72 N. Y. St. Rep. 409 (1896).

As to whether the passage of a resolution in a stockholders' meeting by a vote of stockholders owning more than two-thirds of the stock entered on the minutes and attested by the secretary amounts to the written assent to a mortgage of the property of the corporation, query. *Beebe v. Richmond Light, Heat & Power Co.*, 3 App. Div. 334; 73 N. Y. St. Rep. 734 (1896).

The written assent of the shareholders may be filed simultaneously with the filing of the mortgage. *Matter of Commissioners of State Reservation*, 122 N. Y. 177; 25 N. E. Rep. 269; 33 N. Y. St. Rep. 452 (1890).

The requisite consent of stockholders to the making of a mortgage may be executed on the same day as the mortgage and recorded with it. *Everson v. Eddy*, 36 N. Y. St. Rep. 763 (1891).

Where the requisite consents of stockholders to the execution of a mortgage have been duly given before its execution, it is sufficient, where the rights of other creditors do not intervene, if the consent is not filed until after the execution of the mortgage. *Martin v. Niagara Falls Mfg. Co.*, 122 N. Y. 165; 25 N. E. Rep. 303; 33 N. Y. St. Rep. 318 (1890).

A mortgage executed without the filing of the consent is valid as against subsequent mortgagee or purchaser with notice. *Rochester Savings Bk. v. Averell*, 96 N. Y. 467.

The requirement that the written consent of stockholders owning two-thirds of the capital stock shall first be given and filed before the issue of a mortgage on the property of the corporation, does not require that original stockholders shall be of record upon the stock-book of the corporation. *Hamilton Trust Co. v. Clemes*, 17 App. Div. 152 (1897).

A mortgage upon the property of a manufacturing corporation is valid, although there were but two shareholders at the time the assent of the mortgage was signed and one of the three persons who had acted as trustee of the corporation was not a stockholder. *Matter of Commissioners of State Reservation*, 122 N. Y. 177; 25 N. E. Rep. 269; 33 N. Y. St. Rep. 452 (1890).

The fact that a mortgagee participates as principal shareholder, as trustee and as president in the execution of a mortgage to himself will not impeach its validity where it was sustained by a sufficient consideration and received the assent of the shareholders. *Id.*

The execution of a corporate mortgage by its officers is ratified by the company disposing of and receiving the avails of the bonds and paying interest. *Whitney v. Union Trust Co.*, 65 N. Y. 576 (1875).

The restriction against mortgaging the real estate of a manufacturing corporation without the written assent of the stockholders is a provision designed for their protection instead of that of creditors, and its violation is not available to the latter if the stockholders do not object. *Market*

& Fulton Nat. Bank v. Jones, 7 Misc. Rep. 207; 58 N. Y. St. Rep. 37 (1894).

The fact that money borrowed by a corporation was expended for purposes for which receivers' certificates might properly have been issued, gives the lender no preference over bondholders under a trust mortgage foreclosed. *Farmers' Loan & Trust Co. v. Bankers & Merchants' Tel. Co.*, 83 Hun, 560; 65 N. Y. St. Rep. 35 (1894).

Where an agent of a corporation, under authority to negotiate bonds at a price not less than par and accrued interest, issues them as collateral security for prior debts of the company, the holders are not entitled to share pro rata in the proceeds of a foreclosure of the mortgage given to secure the bonds. *Shaw v. Saranac Horse Nail Co.*, 144 N. Y. 220; 39 N. E. Rep. 73; 63 N. Y. St. Rep. 94 (1894).

Corporations only restrained by their charters have the power to mortgage their property to secure borrowed money on their debts, but unless the statute allows it, can neither sell nor mortgage their franchises. *Carpenter v. Blackhawk Gold Mining Co.*, 65 N. Y. 43 (1875).

A mortgage to secure an overissue of bonds is not void; directors may be personally liable. *New Britain Nat. Bk. v. A. B. Cleveland Co.*, 91 Hun, 447 (1895).

Whatever rights, as against the mortgagor, are vested in the trustee of a mortgage given to secure the payment of bonds, inure to the benefit of the bondholder and are enforceable by him, in case of refusal or neglect on the part of his trustee to act for him upon request. *O'Beirne v. Allegheny & Kluza R. R. Co.*, 151 N. Y. 372 (1897).

The right of a corporation to purchase stock and bonds of another corporation confers upon the purchaser no authority to employ the stock and bonds for purposes condemned by the principles of equity. *Farmers' Loan & Trust Co. v. N. Y. & N. R. R. Co.*, 150 N. Y. 410; 44 N. E. Rep. 1043 (1896).

A mortgage of property "thereafter acquired," becomes a superior lien thereon. *Platt v. N. Y. & Sea Beach R. R. Co.*, 9 App. Div. 87 (1896).

A party who loans money to an embarrassed corporation does not thereby acquire a lien superior to the bondholders under a mortgage existing when the loan was made. *Farmers' Loan & Trust Co. v. Bankers & Merchants' Telegraph Co.*, 148 N. Y. 315; 42 N. E. Rep. 707 (1896).

### Reorganization upon sale of corporate property and franchises.

§ 3. When the property and franchises of any domestic stock corporation shall be sold by virtue of a mortgage or deed of trust, duly executed by it, or pursuant to the judgment or decree of a court of competent jurisdiction, or by virtue of any execution issued thereon, and the purchaser at such sale shall acquire title to the same in the manner prescribed by law, he may associate with him any number of persons, not less than the number required by law for the incorporation of such corporation, a majority of whom shall be

citizens and residents of this State, and they may become a corporation, and take and possess the property and franchises thus sold, and which were at the time of sale possessed by the corporation whose property shall have been so sold, upon making, acknowledging and filing in the offices where certificates of incorporation are required by law to be filed, a certificate in which they shall describe by name and reference to the law under which it was organized, the corporation whose property and franchises they have acquired, and the court by whose authority the sale has been made, with the date of the judgment or decree authorizing or directing the same, and a brief description of the property sold, and also the following particulars.

1. The name of the new corporation intended to be formed by the filing of such certificate.

2. The maximum amount of its capital stock and the number of shares into which it is to be divided, specifying the classes thereof, whether common or preferred, and the amount of and rights pertaining to each class.

3. The number of directors, not less nor more than the number required by law for the old corporation, who shall manage the affairs of the new corporation, and the names and post-office address of the directors for the first year.

4. Any plan or agreement which may have been entered into at or previous to the time of sale, in anticipation of the formation of the new corporation, and pursuant to which such purchase was made. Such corporation shall be vested with and be entitled to exercise and enjoy all the rights, privileges and franchises, which at the time of such sale belonged to, or were vested in the corporation, last owning the property sold, or its receiver, and shall be subject to all the provisions, duties and liabilities imposed by law on such corporations.

Places of filing certificate. Gen. Corp. L., § 5, ante.

Where the property and franchises of a railroad corporation are purchased on foreclosure sale in pursuance of a plan for the readjustment of the respective interests of the mortgage creditors and stockholders, the foreclosure becomes absolute as against the corporation, and all its rights and the proprietary interests of the stockholders are absolutely barred and cut off as if the purchasers had purchased for themselves. The plan has reference only to the new corporation to be formed and to interests therein. *Vatable v. N. Y., L. E. & W. R. R. Co.*, 96 N. Y. 49 (1884).

#### Contents of plan or agreement.

§ 4. At or previous to the sale the purchasers thereat, or the persons for whom the purchase is to be made, may enter into a

plan or agreement, for or in anticipation of the readjustment of the respective interests therein of the mortgage creditors and stockholders of the corporation owning such property and franchises at the time of sale, and for the representation of such interests of creditors and stockholders in the bonds or stock of the new corporation to be formed, and may therein regulate voting by the holders of the preferred and common stock at any meeting of the stockholders, and by the holders and owners of any or all of the bonds of the corporation foreclosed, or of the bonds issued or to be issued by the new corporation, and such right of voting by bondholders shall be exercised in such manner, for such period, and upon such conditions, as shall be therein described. Such plan or agreement must contain suitable provision for the bondholders voting by proxy and must not be inconsistent with the laws of the State and shall be binding upon the corporation, until changed as therein provided, or as otherwise provided by law. The new corporation when duly organized, pursuant to such plan or agreement and to the provisions of law, may issue its bonds and stock in conformity with the provisions of such plan or agreement, and may at any time within six months after its organization, compromise, settle or assume the payment of any debt, claim or liability of the former corporation upon such terms as may be lawfully approved by a majority of the agents or trustees intrusted with the carrying out of the plan of agreement of reorganization, and may establish preferences in respect to the payment of dividends in favor of any portion of its capital stock and may divide its stock into classes, but the capital stock of the new corporation shall not exceed in the aggregate, the maximum amount of stock mentioned in the certificate of incorporation, nor shall the bonds issued by it exceed in the aggregate the amount which a corporation is authorized by the provisions of this article to issue.

#### Sale of property; possession of receiver and suits against him.

§ 5. The supreme court may direct a sale of the whole of the property, rights and franchises covered by the mortgage or mortgages, or deeds of trust foreclosed at any one time and place to be named in the judgment or order, either in case of the non-payment of interest only, or of both the principal and interest due and unpaid and secured by any such mortgage or mortgages or deeds of trust. Neither the sale nor the formation of the new corporation shall interfere with the authority or possession of any receiver of such property and franchises, but he shall remain liable to be removed or discharged at such time as the court may deem proper. No suit or proceeding shall be commenced against such receiver unless founded on wil-



## Stock Corporation Law — §§ 6, 7, 20.

ful misconduct or fraud in his trust after the expiration of sixty days from the time of his discharge; but after the expiration of sixty days the new corporation shall be liable in any action that may be commenced against it, and founded on any act or omission of such receiver for which he may not be sued, and to the same extent as the receiver, but for this section would be or remain liable, or to the same extent that the new corporation would be had it done or omitted the acts complained of.

**Stockholders may assent to plan of readjustment.**

§ 6. Every stockholder in any corporation, the franchises and property whereof shall have been thus sold, may assent to the plan of readjustment and reorganization of interests pursuant to which such franchises and property shall have been purchased at any time within six months after the organization of the new corporation, and by complying with the terms and conditions of such plan become entitled to his pro rata benefits therein. The commissioners, corporate authorities or proper officers of any city, town or village, who may hold stock in any corporation, the property and franchises whereof, shall be liable to be sold, may assent to any plan or agreement of reorganization which lawfully provides for the formation of a new corporation, and the issue of stock therein to the proper authorities or officers of such cities, towns or villages in exchange for the stock of the old or former corporation by them respectively held. And such commissioners, corporate authorities or other proper officers may assign, transfer or surrender the stock so held by them in the manner required by such plan, and accept in lieu thereof the stock issued by such new corporation in conformity therewith.

Assent to the plan within six months is a condition precedent to pro rata benefits. If a stockholder fails to signify his assent within the time limited, he forfeits the right, and against such a forfeiture the courts can give no relief. *Vatable v. N. Y., L. E. & W. R. R. Co.*, 96 N. Y. 49 (1884).

**Combinations prohibited.**

§ 7. No domestic stock corporation and no foreign corporation doing business in this State shall combine with any other corporation or person for the creation of a monopoly or the unlawful restraint of trade or for the prevention of competition in any necessary of life. (Thus amended by L. 1897, ch. 384.)

The amendment of 1897 extended the section to a foreign corporation doing business in this State. See also L. 1897, ch. 383, being an act to prevent monopolies, and the Federal Anti-Trust Law under Part V, "Miscellaneous Laws Affecting Corporations."

An agreement of a railroad company permitting a particular steamboat company to use certain terminal facilities is not in violation of this section. *Alexandria Bay Steamboat Co. v. N. Y. O. & H. R. R. Co.*, 18 App. Div. 527 (1897).

For decisions in which the combination of corporations with other corporations and persons are considered, see a combination to control price of a commodity. *People v. Milk Exchange*, 133 N. Y. 565; 30 N. E. Rep. 850 (1892); *People v. Milk Exchange*, 145 N. Y. 267; 39 N. E. Rep. 1062 (1895); *Leonard v. Poole*, 114 N. Y. 371; 21 N. E. Rep. 707 (1889). The formation of a partnership by corporations. *People v. North River Sugar Refining Co.*, 121 N. Y. 582; 24 N. E. Rep. 834 (1890). An agreement by a combination of corporations with a patentee to manufacture all articles invented by him. *Good v. Daland*, 121 N. Y. 1; 24 N. E. Rep. 15 (1890). A combination or agreement to prevent ruinous competition. *United States Vinegar Co. v. Fochrenbach*, 143 N. Y. 58 (1895); *Oakes v. Cattaraugus Water Co.*, 143 N. Y. 430; 38 N. E. Rep. 461 (1894); *Leslie v. Lorillard*, 110 N. Y. 519; 18 N. E. Rep. 363 (1888).

**ARTICLE II.****Directors and Officers: Their Election, Duties and Liabilities.****Sec. 20. Directors.**

21. Change of number of directors.
22. When acts of directors void.
23. Liability of directors for making unauthorized dividends.
24. Liability of directors for contracting unauthorized debts and overissue of bonds.
25. Liability of directors for loans to stockholders.
26. Transfers of stock by stockholders indebted to corporation.
27. Officers.
28. Inspectors and their oath.
29. Books to be kept.
30. Annual report.
31. Liability of officers for false certificates, reports or public notices.
32. Alteration or extension of business.
33. Sale of franchise and property.

**Directors.**

§ 20. The directors of every stock corporation shall be chosen from the stockholders at the time and place fixed by the by-laws of the corporation by a plurality of the votes of the stockholders voting at such election. Vacancies in the board of directors shall be filled in the manner prescribed in the by-laws, and if a director shall cease to be a stockholder his office shall become vacant. Notice of the time and place of holding any election of directors shall be given by publication thereof, at least once in each week for two successive weeks immediately preceding such election, in a newspaper published in the county where such election is to be held, and in such other manner as may be prescribed in the by-laws. Policy-



holders of an insurance corporation shall be eligible to election as directors. At least one-fourth in number of the directors of every stock corporation shall be elected annually.

Term "directors" includes trustees or other managers. Gen. Corp. L., § 3, subd. 6, ante. By-laws regulating election of directors to be published. Gen. Corp. L., § 11, subd. 5, ante. Conduct of election. Gen. Corp. L., §§ 20-27; Stock Corp. L., § 28. At least two to be residents. Gen. Corp. L., § 29. Quorum and powers of majority. Gen. Corp. L., §§ 29, 39. May make by-laws. Gen. Corp. L., § 29. Failure to make by-laws providing for election. Stock Corp. L., § 22. Act as trustees in case of dissolution. Gen. Corp. L., § 30; Stock Corp. L., § 57. Change in number. § 21. Liability for making unauthorized dividends. § 23. Liability for unauthorized debts and over-issue of bonds. § 24. Liability for loans to stockholders. § 25. May appoint officers. § 27. Annual report and penalty for not making. § 30. Liability for false certificates and false reports generally. § 31. Penal liability for misconduct. Penal Code, §§ 594, 610, 611, 613, 614. Actions against directors for misconduct. Code Civ. Pro., §§ 1781-82, post, "Actions and Proceedings Relating to Corporations."

Any number of stockholders, however small their holdings, provided they hold a plurality of the stock voted, may choose the directors. Matter of Rapid Transit Ferry Co., 15 App. Div. 530 (1897). And a by-law providing that the majority of the stockholders present in person or by proxy at any meeting of the stockholders, shall constitute a quorum, does not apply to such election. *Id.*

If the officers of a corporation fail to call an election, as they are bound in duty to do, then either one of the stockholders or any person aggrieved may apply to the court for relief requiring an election to be held. Matter of Light Hall Mfg. Co., 47 Hun, 258 (1888).

An agreement to elect a person director, upon consideration of his conducting the corporate affairs so as to increase the value of its shares, is void as against public policy. Kountze v. Flanagan, 46 N. Y. St. Rep. 471 (1892).

There being no by-law on the subject a corporation may hold an election of directors upon giving the statutory notice. Matter of David Jones Co., 67 Hun, 360; 51 N. Y. St. Rep. 829 (1893).

One who holds the bare legal title to stock, without any beneficial interest, though qualified to vote thereon, is not eligible as a director, and the court may, on an application to vacate his election, inquire into his real rights. Matter of Elias, 17 Misc. Rep. 718 (1896).

Where the title of an officer rests upon an invalid election, it cannot be conferred by mere subsequent recognition. People ex rel. Nicholl v. N. Y. Infant Asylum, 122 N. Y. 190; 25 N. E. Rep. 241; 33 N. Y. St. Rep. 296 (1890).

Actual or implied acceptance of the office of director is necessary to charge a stockholder with the character of a director. Cameron v. Seaman, 69 N. Y. 396 (1877).

A meeting of the directors of a corporation at

which the ordinary business is to be considered may be called by a general notice not specifying the object of the meeting. Matter of Argus Co., 138 N. Y. 557; 34 N. E. Rep. 388; 53 N. Y. St. Rep. 270 (1893).

Directors or trustees of a corporation cannot vote at a meeting of the board by proxy. Craig Medicine Co. v. Merchants' Bank, 59 Hun, 361 (1891).

As soon as a director parts with all beneficial interest in, and control over, the stock which he is required to hold, and causes the officers of the corporation to have knowledge of such effect by a request that transfer be made in the books of the company, he no longer possesses the qualifications which the statute declares to be essential. Chemical Nat. Bank v. Colwell, 132 N. Y. 250; 30 N. E. Rep. 644; 43 N. Y. St. Rep. 876 (1892).

For other decisions as to the powers and duties of directors, see Gen. Corp. L., § 29, and cases cited; and Stock Corp. L., § 27, as to powers and duties of officers generally.

### Change of number of directors.

§ 21. The number of directors of any stock corporation may be increased or reduced, but not above the maximum nor below the minimum number prescribed by law, when the stockholders owning a majority of the stock of the corporation shall so determine, at a meeting to be held at the usual place of meeting of the directors, on two weeks' notice in writing to each stockholder of record. Such notice shall be served personally or by mail, directed to each stockholder at his last known post-office address. Proof of the service of such notice shall be filed in the office of the corporation at or before the time of such meeting. The proceedings of such meeting shall be entered in the minutes of the corporation and a transcript thereof, verified by the president and secretary of the meeting, shall be filed in the offices where the original certificates of incorporation were filed. If a corporation formed under or subject to the banking law, the consent of the superintendent of banks, and if an insurance corporation, the consent of the superintendent of insurance, shall be first obtained to such increase or reduction of the number of directors.

Place of filing. Gen. Corp. L., § 5, ante.

It seems that the legality of a change in the number of directors can only be raised in a direct proceeding by one whose interests are affected. Wallace v. Walsh, 125 N. Y. 26; 25 N. E. Rep. 1076 (1890).

### When acts of directors void.

§ 22. When the directors of any corporation for the first year of its corporate existence shall hold over and continue to be directors after the first year, because of their neglect or refusal to adopt the by-laws required to enable the stockholders to hold the annual election for directors, all their acts

## Stock Corporation Law — § 23.

and proceedings while so holding over, done for and in the name of the corporation, designed to charge upon it any liability or obligation for the services of any such director, or any officer, or attorney or counsel appointed by them, and every such liability or obligation shall be held to be fraudulent and void.

**Liability of directors for making unauthorized dividends.**

§ 23. The directors of a stock corporation shall not make dividends, except from the surplus profits arising from the business of such corporation; nor divide, withdraw or in any way pay to the stockholders, or any of them, any part of the capital of such corporation, or reduce its capital stock, except as authorized by law. In case of any violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large upon the minutes of such directors at the time, or were not present when the same happened, shall jointly and severally be liable to such corporation and to the creditors thereof to the full amount of the capital of such corporation so divided, withdrawn, paid out or reduced. But this section shall not prevent a division and distribution of the assets of any such corporation remaining after the payment of all its debts and liabilities upon the dissolution of such corporation or the expiration of its charter.

Making unlawful dividends, a misdemeanor, Penal Code, §§ 594, 614, post. Director may be suspended or removed. Code Civ. Pro., §§ 1781-83, post, "Actions and Proceedings Relating to Corporations."

Where a corporation has a surplus, whether a dividend shall be made, and if made, how much it shall be, and when and where it shall be payable, rests in the fair and honest discretion of the directors uncontrollable by the courts. *Williams v. Western Union Tel. Co.*, 93 N. Y. 162 (1883); *Beveridge v. N. Y. Elevated R. R. Co.*, 112 N. Y. 1; 20 N. Y. St. Rep. 962.

The rate of dividend and the amount of surplus which the interests of the company require to be retained, rests in the discretion of the trustees, and where they act in good faith they cannot be compelled to distribute such surplus at the suit of a stockholder. *McNab v. McNab & Harlin Mfg. Co.*, 41 N. Y. St. Rep. 906 (1891); aff'd, 133 N. Y. 687; 31 N. E. Rep. 627.

There is no statute prohibiting a corporation from making a stock dividend. *Williams v. Western Union Tel. Co.*, 93 N. Y. 162 (1883).

The issuing and division among the stockholders of stock certificates is not a division of its capital. *Williams v. Western Union Tel. Co.*, 9 Abb. N. C. 437 (1881).

Directors have no right to issue stock to be distributed among the stockholders as a dividend

unless the corporation has accumulated and added to its capital money or property equal in value to the stock issued. *Berwind-White Coal Mining Co. v. Ewart*, 11 Misc. Rep. 490; 64 N. Y. St. Rep. 458 (1895).

A corporation cannot under this section make a scrip dividend in one year and in the next year issue bonds to pay it. *Merz v. Interior Conduit & Insulation Co.*, 87 Hun. 430; 68 N. Y. St. Rep. 63 (1895).

A stockholder cannot be compelled to take his earnings in the form of additional capital. *Hatch v. Western Union Tel. Co.*, 9 Abb. N. C. 430 (1881); *Williams v. Western Union Tel. Co.*, id. 419 (1881).

The right to dividends accrues when they are declared no matter when the earnings are made. *Hyatt v. Allen*, 56 N. Y. 553 (1874); *Goldsmith v. Swift*, 25 Hun. 201.

A stockholder is entitled to all dividends subsequent to the time he acquired the stock. *Jones v. Terre Haute & Richmond R. R. Co.*, 57 N. Y. 196 (1874).

Where a dividend is declared but the time of payment is left to the discretion of the agent of the corporation, the owner of the stock at the time the dividend is declared is entitled thereto. *Hill v. Newichawanick Co.*, 8 Hun. 459; aff'd, 71 N. Y. 493 (1876).

A transfer of stock carries its proportionate share of the assets of the company including undeclared dividends in arrears. *Boardman v. Lake Shore & M. S. R. R. Co.*, 84 N. Y. 157; *Prouty v. Lake Shore & M. S. R. R. Co.*, 85 id. 272 (1881).

An assignee of guaranteed stock has the right to payment of unpaid dividends that fall due before he acquired his title. *Jermain v. Lake Shore & M. S. R. R. Co.*, 91 N. Y. 483 (1883).

In the absence of any provision in a contract for sale and purchase of stock, outside of and not subject to the rules of the stock exchange, the contract gives the dividends to the owner of the shares when the dividends were declared. *Hopper v. Sage*, 112 N. Y. 530; 20 N. E. Rep. 350; 21 N. Y. St. Rep. 491 (1889).

Undeclared and undivided earnings of a company are incidental to the shares of stock and cannot be assigned separately from them. *Manning v. Quicksilver Mining Co.*, 24 Hun 360 (1881).

A company's books are the best evidence of the right to dividends. *Brisbane v. Del. L. & W. R. R. Co.*, 25 Hun. 438 (1881).

Where a certificate of stock is transferable only on the books of the company, the company is protected in paying dividends to the person having the book title. *Id.*

A pledgee of stock is the legal owner and entitled to dividends. *Hill v. Newichawanick Co.*, 48 How. Pr. 427; aff'd, 71 N. Y. 593 (1874); but see *Warner v. Watson et al.*, 4 Misc. 12 (1893).

A court of equity will assume jurisdiction of an action brought by stockholders against directors of a corporation, who in bad faith and without reasonable cause refuse to declare a dividend out of a surplus available for the purpose. *Hiscock v. Lacy*, 9 Misc. Rep. 578 (1894).

A plaintiff cannot at the same time maintain an action against a corporation for conversion of his stock and a separate action to recover

dividends declared on the same shares. *Hughes v. Vermont Copper Mining Co.*, 72 N. Y. 207; aff'g 7 Hun, 677 (1878).

A stockholder who has received dividends is not liable in an action for money had and received at the suit of a person claiming a share therein. *Peckham v. Van Wagenem*, 83 N. Y. 40 (1880).

A corporation created by consolidation has no power to declare a dividend as such of earnings made prior to its creation by one of the constituent corporations, nor to declare out of its own earnings a dividend on the stock of one of such corporations. *Chase v. Vanderbilt*, 37 Sup. Ct. 334; aff'd, 62 N. Y. 307 (1874).

A corporation organized under the Manufacturing Act of 1848 is not subject to the prohibition of the Revised Statutes against the declaration of a dividend except out of surplus, but it is subject only to the penalty prescribed by such act which makes trustees improperly declaring a dividend liable for all debts existing and contracted through their term of office. *People ex rel. Edison General Electric Co. v. Barker*, 141 N. Y. 251; 36 N. E. Rep. 196; 56 N. Y. St. Rep. 823 (1894); rev'g 74 Hun, 418.

A liability of directors under this section is in the nature of an indemnity for the loss which the corporation or its creditors may sustain from the payment of an illegal or unauthorized dividend. *Dykeman v. Keeney*, 16 App. Div. 131 (1897).

#### Liability of directors for contracting unauthorized debts and overissue of bonds.

§ 24. No stock corporation, except a monied corporation, shall create any debt, if thereby its total indebtedness not secured by mortgage shall exceed the amount of its paid-up capital stock, and the directors creating or consenting to the creation of any such debt shall be personally liable therefor to the creditors of the corporation. If bonds or other obligations of the corporation, secured by mortgage, are issued in excess of the amount authorized by law, or in violation of law, the directors voting for such overissue, or unlawful issue, shall be personally liable to the holders of the bonds or other obligations illegally issued for the amount held by them, and to all persons sustaining damage by such illegal issues for any damage caused thereby.

This section does not apply to railroad corporations. R. R. L., § 23, as added by L. 1898, ch. 80. Limitation on power to borrow money and mortgage property. § 2, ante.

A personal liability of directors for creating debts by mortgage in excess of its paid-up capital stock is for the benefit of all the creditors. Such liability must be enforced in equity in a suit where all the creditors, and the corporation itself, are parties or represented, where an accounting can be had, and all the facts ascertained and equitably adjusted. *Nat. Bank of Auburn v. Dillingham*, 147 N. Y. 603; 42 N. E. Rep. 338 (1895); rev'g 86 Hun, 100.

A corporation seeking to enforce a claim against one of its directors or stockholders must establish it by the application of the same rules of evidence as are applied in an action brought by an individual to enforce a claim against any defendant. Its books are incompetent for that purpose. *Rudd v. Robinson*, 126 N. Y. 113; 26 N. E. Rep. 1046; 36 N. Y. St. Rep. 500 (1891).

#### Liability of directors for loans to stockholders.

§ 25. No loan of moneys shall be made by any stock corporation, except a monied corporation, or by any officer thereof out of its funds to any stockholder therein, nor shall any such corporation or officer discount any note or other evidence of debt, or receive the same in payment of any installment or any part thereof due or to become due on any stock in such corporation, or receive or discount any note, or other evidence of debt, to enable any stockholder to withdraw any part of the money paid in by him on his stock. In case of the violation of any provision of this section, the officers or directors making such loan, or assenting thereto, or receiving or discounting such notes or other evidences of debt, shall, jointly and severally, be personally liable to the extent of such loan and interest, for all the debts of the corporation contracted before the repayment of the sum loaned, and to the full amount of the notes or other evidences of debt so received or discounted, with interest from the time such liability accrued.

Penal liability. Penal Code, § 594, post.

#### Transfers of stock by stockholders indebted to corporation.

§ 26. If a stockholder shall be indebted to the corporation, the directors may refuse to consent to a transfer of his stock until such indebtedness is paid, provided a copy of this section is written or printed upon the certificate of stock.

Where the certificates of stock issued to stockholders bore on their face the clause "no transfer of the stock of this association shall be made without the consent of the board of directors by any stockholder who shall be liable to the association, either as principal debtor or otherwise," and no provision to this effect existed in the articles of incorporation nor in any by-law, it was held that, although the directors were without authority, either with or without a by-law, to establish such restriction the stockholders had by lapse of time and course of dealing acquiesced in and ratified it. That by section 26 of the Stock Corporation Law such a restriction was authorized to be imposed. *Reynolds v. Bank of Mt. Vernon*, 6 App. Div. 62 (1896).

A corporation has at common law no claim or lien upon the stock of a stockholder for an indebtedness due it. *Driscoll v. West, Bradley, etc., Mfg. Co.*, 55 N. Y. 96 (1874).



## Stock Corporation Law — § 27.

**Officers.**

§ 27. The directors of a stock corporation may appoint from their number a president, and may appoint a secretary, treasurer, and other officers, agents and employees, who shall respectively have such powers and perform such duties in the management of the property and affairs of the corporation, subject to the control of the directors, as may be prescribed by them or in the by-laws. The directors may require any such officer, agent or employee to give security for the faithful performance of his duties, and may remove him at pleasure. The policyholders of an insurance corporation shall be eligible to election or appointment as its officers.

**Executive committee may be appointed.**

Under a power to appoint subordinate officers and agents as the business of the corporation shall require, the directors of the corporation may appoint an executive committee with power to transact the business of the company during the interval between the meetings of its board of trustees. *Sheridan Electric Light Co. v. Chatham Nat. Bank*, 127 N. Y. 517; 28 N. E. Rep. 467 (1891).

**Corporation bound by acts within apparent scope of authority.**

A corporation is only bound by the acts and contracts of its agents within the scope of their authority. *Alexander v. Cauldwell*, 83 N. Y. 480 (1881); *Western R. R. Co. v. Bayne*, 11 Hun, 155; aff'd, 75 N. Y. 1 (1877).

A corporation is bound by the acts of its officers or agents made within the general scope of its business. *Benesch v. John Hancock Mutual Ins. Co.*, 32 N. Y. St. Rep. 73 (1890).

As to what is within the apparent scope of the authority of an officer of a corporation, see *Wilson v. Kings County Elevated R. R. Co.*, 114 N. Y. 487; 21 N. E. Rep. 1015 (1889).

A person seeking to charge a corporation with the act of one of its officers is not affected by secret instructions limiting the officer's apparent powers. *Bank of Ithaca v. Potier & Styinus Mfg. Co.*, 17 N. Y. St. Rep. 227 (1888).

A corporation acts through its agents and such acts to be binding upon the corporation must be done in the line of the agency and within the limits of the authority conferred or be ratified by the corporation. *Queen v. Second Ave. R. R. Co.*, 35 Super. Ct. 154 (1872).

A manager of a corporation having mostly the charge of its business may execute a promissory note binding upon the corporation, incidental to and in the scope of its business. *Negley v. Counting Room Co.*, 1 N. Y. St. Rep. 298 (1886).

A supervising agent of a corporation who is its executive officer may accept a draft on the company in the absence of proof of any restriction upon the general powers conferred upon him. *Hascall v. Life Association of America*, 5 Hun, 151 (1875); aff'd, 66 N. Y. 616.

Authority conferred on the president of a corporation to sell stock, in the absence of any in-

structions, authorizes him to employ a broker for such purpose. *Sistare v. Best*, 16 Hun, 611 (1879).

A sale by the president of a corporation in the usual line of its business is valid. *Horton Ice Cream Co. v. Merritt*, 43 N. Y. St. Rep. 416 (1892).

There is nothing in the nature of the business of a water company that implies that its treasurer by virtue of his office has authority to borrow money and give notes therefor. *First Nat. Bank v. Council Bluffs City Water-Works Co.*, 56 Hun, 412; 32 N. Y. St. Rep. 85 (1890).

The cashier of a bank was held to have an implied authority to employ an attorney to prosecute the collection of claims turned over to it by a debtor firm. *Root v. Olcott*, 42 Hun, 536 (1886).

The authority for the act of an agent of a corporation may be shown by presumptive evidence where the scope of the authority is shown and the act would ordinarily be within the authority. *Martin v. Niagara Falls Paper Mfg. Co.*, 122 N. Y. 165; 25 N. E. Rep. 303; 33 N. Y. St. Rep. 318 (1890).

A contract purporting to be made by a corporation within its power and having its signature by its president and the corporate seal affixed by him, is *prima facie* binding upon it. *New England Iron Co. v. Gilbert Elevated R. R. Co.*, 91 N. Y. 153 (1883).

The holder of the notes of a corporation made and issued by an officer without authority cannot avail himself of the fact that the officer has between himself and the corporation charged the notes on its books against himself, so as to reach dividends due him as a stockholder. *Drake v. N. Y. Iron Mine Co.*, 89 Hun, 280; 68 N. Y. St. Rep. 839 (1895).

It cannot be presumed that the agent of a corporation had authority to transact business which the corporation itself was not, by its charter, authorized to engage in. *Alexander v. Cauldwell*, 83 N. Y. 480 (1881).

The burden is on the corporation to show that a contract made by its president in its behalf was unauthorized. *Patteson v. Ongley Electric Co.*, 87 Hun, 462; 68 N. Y. St. Rep. 58 (1895).

A bank is not liable for drafts nor liable for a promise made by its president to pay certain drafts, in the absence of proof of his authority, there being evidence that the obligee knew that similar transactions had failed to meet the sanction of the directors. *Stallcup v. Nat. Bank of the Republic*, 15 N. Y. St. Rep. 39 (1888).

**By-laws do not limit apparent powers.**

A third person has the right to presume that an officer of a corporation has the right to perform the acts that are ordinarily within the scope of the business of such an officer, and where the act is within the apparent scope of the authority, the third person is not bound by a by-law to the contrary. *Rathbun v. Snow*, 123 N. Y. 343; 25 N. E. Rep. 379; 33 N. Y. St. Rep. 600 (1890).

Where a contract is made with the officer of a corporation within apparent scope of his powers, although not in accordance with its by-laws, the corporation is bound thereby. *Smith v. Martin Anti-Fire Car Heater Co.*, 47 N. Y. St. Rep. 26 (1892).

Where directors of a corporation permit its officers to hold themselves out as clothed with full authority to manage its affairs, they cannot repudiate contracts within the apparent scope of the officer's authority, because of a by-law of the corporation not known to the persons with whom the officers have dealt. *Parmelee v. Associated Physicians & Surgeons*, 11 Misc. Rep. 363; 65 N. Y. St. Rep. 296 (1895).

Where an officer of a corporation holds himself out as the general manager and director of its business, the corporation cannot set up its by-laws in contravention of the authority thus publicly conferred. *Marine Nat. Bank of Buffalo v. Butler Colliery Co.*, 23 N. Y. St. Rep. 318 (1889).

Where the certificate of incorporation of a business corporation does not contain any limitations upon the powers of its executive officers, the right of a person employed by the president of the corporation to prepare a pamphlet setting forth the patent which the corporation was organized to work under, to recover against the corporation for such service, cannot be defeated by any limitation upon the president's powers contained in the by-laws, unless such person had expressed notice of such limitation. *Powers v. Schlicht Heat & Power Co.*, 23 App. Div. 380.

A corporation is liable on a note made by its treasurer who conducts all its business without supervision in the usual course thereof, though it be not countersigned by the president, as required by its by-laws. *Perry v. Council Bluffs Water-Works Co.*, 67 Hun, 456; 51 N. Y. St. Rep. 326 (1893).

### Ratification.

A contract made by the president of a corporation of a similar nature to other contracts of employment made by him may be enforced on the theory of having been ratified by the directors. *Merill v. Consumers' Coal Co.*, 114 N. Y. 216; 21 N. E. Rep. 155; 23 N. Y. St. Rep. 214 (1889).

When a corporation accepts the benefits of a contract made by its officers it will be deemed to have ratified such contract. *Jourdan v. Long Island R. R. Co.*, 115 N. Y. 380; 22 N. E. Rep. 153 (1889).

Where a corporate officer performs an act not specifically authorized, or authorized by its by-laws, a course of conduct in business, or acquiescence or ratification by the corporation is necessary. *Bangs v. Nat. Macaroni Co.*, 15 App. Div. 522 (1897).

Authority of the president and treasurer of a corporation to bind it by indorsement of negotiable paper to raise money for use in its business may be established by showing that the directors knew of the acts of the officers in creating such obligations on previous occasions and acquiesced therein, and such knowledge may be established by circumstantial evidence. *Fifth Nat. Bank v. Navassa Phosphate Co.*, 119 N. Y. 256; 23 N. E. Rep. 737; 29 N. Y. St. Rep. 686 (1890).

To authorize recovery of the corporation upon its promissory note signed by its manager, either prior authority or subsequent ratification must be shown and this may be evidenced by general

course of business as well as by resolution of the board of directors. *Huntington v. Attrill*, 118 N. Y. 365; 23 N. E. Rep. 544; 29 N. Y. St. Rep. 5 (1890).

Where the act of an officer is not within the scope of the business of the corporation, his authority must be shown either by the charter, by-laws or resolution of the corporation, by recognition of similar acts of the same official or ratification and acceptance of some benefit from the performance of the act. *Mather v. Union Loan & Trust Co.*, 26 N. Y. St. Rep. 58 (1889).

Where the president of a corporation has indorsed notes for the corporation, proof of the entry of the transfers on the company's books may be sufficient to estop the company from denying the president's authority. *Fifth Nat. Bank v. Navassa Phosphate Co.*, 56 Hun, 136; 30 N. Y. St. Rep. 289 (1890).

Where a corporation has paid notes irregularly issued by its president, without repudiating his authority, the extent of his authority on subsequent notes of a similar character should be submitted to the jury. *Grant v. Geo. C. Treadwell Co.*, 82 Hun, 591; 64 N. Y. St. Rep. 388 (1894).

Where a corporation has used the proceeds of notes irregularly issued by its president, it is bound thereby in an action by the creditor. *Milbank v. De Riesthal*, 82 Hun, 537; 64 N. Y. St. Rep. 199 (1894).

Where the by-laws do not empower a treasurer to sign notes of the corporation, acquiescence or ratification is necessary. Authority to incur specified indebtedness for supplies does not include power to give notes for it. *Bangs v. Nat. Macaroni Co.*, 15 App. Div. 522 (1897).

A contract entered into by the president and secretary of a corporation and acted upon by them was held binding though not expressly ratified by directors. *Jourdan v. Long Island R. R. Co.*, 115 N. Y. 380; 22 N. E. Rep. 153.

The stockholders of a corporation may, in the absence of fraud, ratify the act of its president and bind the corporation for the payment of a debt incurred for the accommodation of the president individually. *Martin v. Niagara Falls Paper Mfg. Co.*, 122 N. Y. 165; 25 N. E. Rep. 303; 33 N. Y. St. Rep. 318 (1890).

Where a person is employed as a servant by one assuming to act on behalf of a corporation, and renders services accordingly, with the knowledge and without objection of its officers, the corporation will be held to sanction the contract and will be compelled to pay for the services in accordance to the agreement. *O'Hara v. Lamson & Goodnow Mfg. Co.*, 2 City Court, 158 (1883).

A corporation is estopped from denying the authority of an officer to do a particular act in which it has frequently acquiesced. *Nat. Park Bank v. German-American Warehousing Co.*, 53 Super. Ct. 367 (1886).

A lawyer employed by a corporation cannot bind it by a contract made by him without authority and the person dealing with him is bound to know the extent of his authority, and in order to enforce the contract must prove the authority by ratification. *Nutting v. Kings County Elevated R. R. Co.*, 88 Hun, 251; 72 N. Y. St. Rep. 43 (1895).

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**Corporation liable for acts of agents.**

A corporation is liable for the consequences of its wrongful acts and omissions, and for the acts of its agents while engaged in the business of their agency, to the same extent and under the same circumstances as natural persons. *Fishkill Savings Instn. v. Nat. Bank of Fishkill*, 80 N. Y. 162 (1880).

**Personal liability.**

Where a party signs a note as president of a corporation there is an implied warranty on his part that he has authority to do so, and if he has not, he is liable in damages for the breach thereof. *Miller v. Reynolds*, 92 Hun, 400; 71 N. Y. St. Rep. 574 (1895).

An officer of a corporation may be personally liable as a wrongdoer, while acting as the agent of the corporation. *Chenango Bridge Co. v. Paige*, 83 N. Y. 178 (1880).

**Compensation.**

Where a stockholder of a corporation assumes the duties of one of its officers and performs them without any agreement or provision for compensation, the presumption in view of his relation and interest is that he performs the official service gratuitously. *Mather v. Eureka Mower Co.*, 118 N. Y. 629; 23 N. E. Rep. 993; 30 N. Y. St. Rep. 102 (1890).

An officer of a company is not entitled to receive compensation, in the absence of agreement, for services performed in the discharge of the duties of his office. *Barril v. Calendar Insulating & Waterproofing Co.*, 50 Hun, 257; 19 N. Y. St. Rep. 877 (1888). Also *Mather v. Eureka Mower Co.*, 44 Hun, 333.

To authorize the president who is also a director of a corporation to recover for his services as president, he must show that the directors had assented to his right to compensation. *Farmers' Loan & Trust Co. v. Housatonic R. R. Co.*, 152 N. Y. 251; 46 N. E. Rep. 504 (1897).

An officer of a corporation may recover against it for services rendered in its behalf in a capacity distinct from his office. *Sergeant v. Sergeant Granite Co.*, 3 Misc. Rep. 325; 52 N. Y. St. Rep. 517 (1893).

An oral agreement made by trustees at a meeting at which a treasurer is elected, that he should receive a specified salary, is binding upon the corporation. *Outterson v. Fonda Lake Paper Co.*, 49 N. Y. St. Rep. 556 (1892).

The salary of an officer of a corporation ceases upon the sale of its property in business with his assent. *Long Island Ferry Co. v. Turbell*, 48 N. Y. 427; *Rodney v. Southern R. R. Assn.*, 3 N. Y. St. Rep. 564.

An agreement securing the services of an officer as in an advisory capacity for life, he agreeing not to enter the service of any other company, entered into with the trustees of a corporation, is void. *Beers v. N. Y. Life Ins. Co.*, 66 Hun, 75; 49 N. Y. St. Rep. 182 (1892).

An executive officer of a corporation having general authority by the by-laws to appoint, remove and fix the compensation of employees, does not

have the power to make a contract of employment for life. *Carney v. N. Y. Life Ins. Co.*, 19 App. Div. 160 (1897).

An attorney employed by the directors of a corporation to institute proceedings for its dissolution is retained by the corporation and must look to it and not to the directors personally for his fee. *Drew v. Longwell*, 81 Hun, 144; 62 N. Y. St. Rep. 697 (1894).

**Title of office.**

A court of equity may inquire into the title of one exercising the functions of a corporate officer, but not to the extent of ousting a de facto officer. *Ciancimino v. Man*, 1 Misc. Rep. 121; 48 N. Y. St. Rep. 697 (1892).

**Power to remove.**

The secretary of a corporation is chargeable with knowledge of a by-law which gives the board of directors the right to remove any officer at pleasure. *Douglass v. Merchants' Ins. Co.*, 118 N. Y. 484; 23 N. E. Rep. 806; 29 N. Y. St. Rep. 944 (1890).

**Decisions generally.**

A stockholder can act as attorney for his corporation. *Barker v. Caro & Fulton R. R. Co.*, 3 Th. & C. 328 (1874).

A corporation is bound by the knowledge of its executive officers. *Getman v. Second Nat. Bank of Oswego*, 23 Hun, 498 (1881).

Where the director of a corporation authorizes its president to designate a suitable person to whom he should assign all the corporate property, and he assigned to himself, the title did not vest in the assignee. *Rogers v. Pell*, 89 Hun, 159; 69 N. Y. St. Rep. 213 (1895).

Transactions in the bonds of a corporation by the former president after he has ceased to be an officer, are regarded as the transactions of a stranger. *Duncomb v. N. Y. Housatonic & N. R. R. Co.*, 84 N. Y. 190 (1881).

The treasurer of a corporation is not liable for funds deposited with a firm which has acted as its financial agent from a period long prior to his appointment as treasurer, where the corporation understood that in making such deposits it was not transacting business with the treasurer as such, although he was a member of the firm in question. *N. Y. Providence & B. R. R. Co. v. Dickson*, 114 N. Y. 80; 21 N. E. Rep. 110; 22 N. Y. St. Rep. 685 (1889).

The position of superintendent of a cemetery association is not fiduciary in its character, and the superintendent may deal with the corporation for his own benefit. *Palmer v. Cypress Hill Cemetery*, 122 N. Y. 429; 34 N. Y. St. Rep. 30 (1890).

Where an officer has authority to sign receipts and a bank accepts, as collateral security for the note of a corporation, a receipt signed by such officer, the company is bound thereby. *Hanover Nat. Bk. v. American Dock & Trust Co.*, 75 Hun, 55; 56 N. Y. St. Rep. 862 (1894).

When a statute prescribes the persons who may bind a corporation and the manner in which they



may bind it, resort cannot be had to other instrumentalities. The designation of certain agents and methods for the doing of an act, implies a prohibition of any other. *Landers v. Frank Street M. E. Church of Rochester*, 97 N. Y. 119 (1884).

The president of a corporation, who is also its manager, authorized to pay himself a reasonable sum, not to exceed \$100 per month, has no right to execute the note of the company in payment of his personal obligation, although the corporation may be his debtor to the amount of the note at the time it is executed. *Miller v. Reynolds*, 92 Hun, 400 (1895).

A promissory agreement of a corporation within the scope of its legitimate purposes, through its officers, is valid, though not bearing its corporate seal. *Leinkauff v. Calman*, 110 N. Y. 50; 17 N. E. Rep. 389 (1888).

### Inspectors and their oath.

§ 28. The inspectors of election of every stock corporation shall be appointed in the manner prescribed in the by-laws, but the inspectors of the first election of directors and of all previous meetings of the stockholders shall be appointed by the board of directors named in the certificate of incorporation. No director or officer of a monied corporation shall be eligible to election or appointment as inspector. Each inspector shall be entitled to a reasonable compensation for his services, to be paid by the corporation, and if any inspector shall refuse to serve, or neglect to attend at the election, or his office become vacant, the meeting may appoint an inspector in his place unless the by-laws otherwise provide. The inspectors appointed to act at any meeting of the stockholders shall, before entering upon the discharge of their duties, be sworn to faithfully execute the duties of inspector at such meeting with strict impartiality, and according to the best of their ability, and the oath so taken shall be subscribed by them, and immediately filed in the office of the clerk of the county in which such election or meeting shall be held, with a certificate of the result of the vote taken thereat.

Violation of oath or dishonest or corrupt conduct, a misdemeanor. Penal Code, § 613, post. Corporate elections. Gen. Corp. L., §§ 20-27, ante, and cases cited. There must be at least two inspectors. *In re Lighthall Mfg. Co.*, 47 Hun, 258 (1888).

### Books to be kept.

§ 29. Every stock corporation shall keep at its office, correct books of account of all its business and transactions, and a book to be known as the stock-book, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares of stock held by them respectively, the time when they respectively became the owners thereof, and the amount

paid thereon. The stock-book of every such corporation shall be open daily, during business hours, for the inspection of its stockholders and judgment creditors, who may make extracts therefrom. No transfer of stock shall be valid as against the corporation, its stockholders and creditors for any purpose, except to render the transferee liable for the debts of the corporation according to the provisions of this chapter, until it shall have been entered in such book as required by this section, by an entry showing from and to whom transferred. Such latter book shall be presumptive evidence of the facts therein so stated in favor of the plaintiff, in any action or proceeding against such corporation or any of its officers, directors or stockholders. Every corporation that shall neglect or refuse to keep or cause to be kept such books, or to keep any book open for inspection as herein required, shall forfeit to the people the sum of fifty dollars for every day it shall so neglect or refuse. If any officer or agent of any such corporation shall willfully neglect or refuse to make any proper entry in such book or books, or shall neglect or refuse to exhibit the same, or allow them to be inspected and extracts taken therefrom as provided in this section, the corporation and such officer or agent shall each forfeit and pay to the party injured a penalty of fifty dollars for every such neglect or refusal, and all damages resulting to him therefrom.

Misdemeanors in relation to corporate books. Penal Code, § 611, post. Production of books or papers on trial. Code Civ. Pro., §§ 868, 869. Books to be produced at meetings of stockholders. Gen. Corp. L., § 20, ante, and cases cited.

### Inspection of books.

A demand for the exhibition of a stock-book must be made during business hours and at the office of the corporation where the stock-book is kept. *Buker v. Steele*, 43 N. Y. Supp. 346 (1896).

A refusal of the officers of a corporation to allow an inspection of its books, because of the presence of a stockholder with his attorney or other person competent to assist him, is unwarrantable. *People ex rel. Clason v. Nassau Ferry Co.*, 86 Hun, 128; 66 N. Y. St. Rep. 801 (1895).

The right of a stockholder to inspect the books includes the right to take extracts therefrom. *Matter of Martin*, 62 Hun, 557; 42 N. Y. St. Rep. 409 (1891).

Mandamus will lie to compel the corporate officers to allow the inspection of the stock-book. *Sage v. L. S. & M. S. R. R. Co.*, 70 N. Y. 220 (1877); *People ex rel. Hatch v. L. S. & M. S. R. R. Co.*, 11 Hun, 1.

Mandamus will issue to compel the exhibition of corporate books without regard to the motive or purpose of the stockholder. *People ex rel. Harriman v. Peaton*, 20 Abb. N. C. 195 (1887).

A general demand by a stockholder for the exhibition of all the books of the corporation is not

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a sufficient basis for an action against the treasurer for failure to exhibit the stock-book. The demand must be made during business hours and at the office of the corporation where the stock-book is kept. *Buker v. Steele*, 43 N. Y. Supp. 346 (1896).

Where a corporate officer makes a reasonable excuse for not exhibiting a stock-book and requests the stockholder to wait until the next day, he is not liable for the penalty. *Kelsey v. Pfaudler Process Fermentation Co.*, 41 Hun, 120 (1886).

The obligation to exhibit the stock-book is terminated by the suspension of the ordinary corporate business, so as to afford ground for dissolution. *Kelsey v. Pfaudler Process Fermentation Co.*, 45 Hun, 10 (1887).

A stockholder, before invoking the aid of the courts to obtain an inspection of its books under this section, should, being the ownership of the requisite number of shares, make a written request upon its treasurer for a verified statement of its affairs under section 52. This refers to the books of account generally. *People ex rel. Clason v. Nassau Ferry Co.*, 86 Hun, 128; 66 N. Y. St. Rep. 801 (1895).

### Transfers of Stock.

Where discretionary power is not expressly reserved, a corporation cannot refuse to transfer stock to a bona fide purchaser. *Rice v. Rockefeller*, 134 N. Y. 174; 31 N. E. Rep. 907 (1892).

The provision of a statute or corporate by-laws, requiring transfers of stock to be made upon its books, is for its benefit, and where the owner has signed a transfer for a valuable consideration, the certificates issued to him, and the corporation, when requested to make the transfer, without a valid reason refuses to do so, this amounts to a waiver of the requirements; the transfer is complete and the corporation is bound to recognize the title of the assignee, precisely the same as if it has done its duty and made the proper entries upon its books. *Robinson v. National Bank of New Berne*, 95 N. Y. 637 (1884).

The provisions of the by-laws regarding the transfer of stock on the books of a corporation are solely for the protection of the corporation, can be waived at its pleasure, and do not operate to prevent the passing of the entire title, legal and equitable, in the shares, as between the parties, by the delivery of the certificate, with assignment and power of transfer. *Chemical Nat. Bank v. Colwell*, 132 N. Y. 250; 30 N. E. Rep. 644; 43 N. Y. St. Rep. 876 (1892).

Upon the presentation of stock certificates, duly assigned, and accompanied with authority for the holder to transfer, a corporation, if it has no notice of any defect in the holder's title, is legally bound to transfer the stock upon its books. *Hawes v. Gas Consumers' Benefit Co.*, 36 N. Y. St. Rep. 48 (1891).

A transferor of stock is not liable, although it is not transferred to the books of the company, where the failure to do so was caused by the neglect of the company. *Isham v. Buckingham*, 49 N. Y. 216 (1872).

The fact that a third party authorized in an

assignment to transfer stock on the books is unwilling or neglects to do so, does not deprive the owner of the right to the transfer. *Cushman v. Thayer Mfg. Jewelry Co.*, 76 N. Y. 365 (1879).

A transfer of stock not entered in the transfer-book of a corporation does not free the holder from liability for an indebtedness of the corporation incurred subsequent thereto. *Powers v. Knapp*, 71 Hun, 371 (1893).

A creditor, in pursuing his remedies either against stockholder, director or corporation, has the right to rely upon the evidence which stock-book affords as to the ownership of stock, but it is not necessary that the original subscriber must have his holding entered in the stock-book before he can act as a stockholder. *Hamilton Trust Co. v. Clemes*, 17 App. Div. 152 (1897).

A corporation may treat registered shareholders as the actual owners of the shares standing in their name, but the rule is only applicable to such transactions as are within the powers conferred upon the company or its shareholders. *Campbell v. American Zylonite Co.*, 122 N. Y. 455; 25 N. E. Rep. 853; 34 N. Y. St. Rep. 38 (1890).

Where a board of directors cannot reduce capital stock, they may charge the losses of the company against its stock in ascertaining the book value of the shares. *People v. Bankers' Loan & Investment Co.*, 13 Misc. Rep. 221; 68 N. Y. St. Rep. 115 (1895).

An equitable action will lie to compel a transfer of stock by a corporation to the owner of the same. *Cushman v. Thayer Mfg. Jewelry Co.*, 76 N. Y. 365 (1879).

A certificate of stock is not negotiable paper, and if the corporation transfers the stock to the indorsee of the certificate after notice of an adverse claim, it does so at its own peril. *Hawes v. Gas Consumers' Benefit Co.*, 9 N. Y. Supp. 490 (1890).

### Annual report.

§ 30. Every domestic stock corporation and every foreign stock corporation doing business within this State, except moneyed and railroad corporations, shall annually, during the month of January, or, if doing business without the United States, before the first day of May, make a report as of the first day of January, which shall state:

1. The amount of its capital stock, and the proportion actually issued.
2. The amount of its debts or an amount which they do not then exceed.
3. The amount of its assets or an amount which its assets at least equal.

Such report shall be signed by a majority of its directors, and verified by the oath of the president or vice-president and treasurer or secretary, and filed in the office of the secretary of State, and in the office of the county clerk of the county within this State where its principal business office may be located. If such report is not so made and filed, all the directors of the corporation shall jointly and severally be personally liable for all the

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debts of the corporation then existing, and for all contracted before such report shall be made. No director shall be liable for the failure to make and file such report if he shall file with the secretary of State, within thirty days after the first day of February, or the first day of May, as the case may be, a verified certificate, stating that he has endeavored to have such report made and filed, but that the officers or a majority of the directors have refused and neglected to make and file the same, and shall append to such certificate a report containing the items required to be stated in such annual report, so far as they are within his knowledge or are obtainable from sources of information open to him, and verified by him to be true to the best of his knowledge, information and belief. (Thus amended by L. 1897, ch. 384.)

The amendment to this section in 1897 extended it to "every foreign stock corporation doing business within the State." Penal liability for knowingly making or concurring in false report. Penal Code, § 611, post. Presumption of knowledge. Penal Code, § 614, post.

**Statute to be strictly construed.**

The statute is highly penal and is to be construed accordingly, and a party seeking to charge a director within its terms must allege and prove affirmatively every fact upon which his right to recover depends. *Whitney v. Cammann*, 137 N. Y. 342; 33 N. E. Rep. 305; 50 N. Y. St. Rep. 644 (1893).

A statute imposing a liability upon directors for filing a false report is highly penal and must be strictly construed. *Witherow v. Slayback*, 11 Misc. Rep. 526; 64 N. Y. St. Rep. 456 (1895).

To charge directors personally for a debt of the corporation is in the nature of a penal action, and the plaintiff must prove a clear indebtedness for which a present right of action exists. *Sherman v. Slayback*, 58 Hun, 255; 34 N. Y. St. Rep. 383 (1890).

An action to enforce the personal liability of trustees for failure to file an annual report is a strictly legal one and is to be determined as such without regard to equitable considerations. *Brown v. Clark*, 81 Hun, 267; 62 N. Y. St. Rep. 764 (1894).

A complaint under this section to enforce the penalty imposed thereby for failure to file an annual report, which does not allege that the corporation in question was a stock corporation, does not state a cause of action. *Marshall v. Barr*, 27 App. Div. 645 (1898).

**Report must be filed.**

The mere making of the report is not sufficient. It must be filed and this duty cannot be delegated. *Whitney v. Cammann*, 137 N. Y. 342; 33 N. E. Rep. 305 (1893).

**Verification.**

Report of the corporation under this section must be verified by the president or vice-president and the treasurer or secretary; that is, either by

the president or vice-president, together with either the treasurer or secretary. A verification by its president alone is not sufficient, although he has acted as its secretary and treasurer. *Manhattan Co. v. Kalvanberg*, 27 App. Div. 31 (1898).

A single verification of the report of one who is both president, vice-president and treasurer, satisfies the requirements. *Novelty Mfg. Co. v. Connell*, 88 Hun, 254; 68 N. Y. St. Rep. 697 (1895).

The verification of the annual report by the president of a corporation who under the by-laws also discharges the duties of the treasurer and secretary, is sufficient to defeat an action against a director on the ground that no report had been filed. *Noble v. Euler*, 20 App. Div. 548 (1897).

The verification of the annual report by the president alone is insufficient where the office of secretary is vacant and the president is discharging the duties of secretary, if the report does not show that he verifies also as secretary. *Shultz v. Chatfield*, 17 Misc. Rep. 264 (1896).

**De facto directors.**

The fact that an annual report is signed by a de facto trustee does not render it ineffectual to protect the directors from liability. *Wallace & Son v. Walsh*, 125 N. Y. 26; 25 N. E. Rep. 1076; 34 N. Y. St. Rep. 426 (1890).

A de facto director who has acted as such cannot avoid his liability for failure to file a report on the ground that he was the owner of one share of stock only and not of five shares requisite to qualify him as a director. *Donnelly v. Pancoast*, 15 App. Div. 4 (1897).

**To be made by majority of acting board.**

Under a former statute requiring that an annual report be made by a majority of the directors, it was held that the failure to file a certificate of a reduction in the number duly made did not render an annual report signed by an actual majority ineffectual to protect them from personal liability. *Wallace & Son v. Walsh*, 125 N. Y. 26; 25 N. E. Rep. 1076; 34 N. Y. St. Rep. 426 (1890).

**When report need not be made.**

A report need not be filed after all the property has been transferred to a receiver. *Cochran v. Smith*, 54 Super. Ct. 117 (1886); if business is abandoned. *Kirkland v. Killie*, 99 N. Y. 390; 2 N. E. Rep. 36 (1885); if charter has expired. *Gold v. Clyne*, 134 N. Y. 262; 31 N. E. Rep. 980 (1892).

A director who has ceased to be a stockholder for two years by reason of the dissolution of the corporation may set up that fact as a bar to an action for failure to file an annual report the year before the corporation was dissolved. *Noble v. Euler*, 20 App. Div. 548 (1897).

**Insolvency does not relieve from duty.**

The fact that a corporation has discontinued business and is insolvent does not absolve the directors from filing an annual report. *Cummings v. American Geer & Spring Co.*, 87 Hun, 598; 68 N. Y. St. Rep. 653 (1895); *Brown v. Clark*, 81 Hun, 267; 62 N. Y. St. Rep. 764 (1894).



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**Effect of transfer of shares.**

A transfer of his shares by a director, even though made in contemplation of the insolvency of the corporation, relieves him from liability for failure to make an annual report thereafter. *Sinclair v. Dwight*, 9 App. Div. 297 (1896).

**Limitation of action.**

The enforcement of the personal liability of a director for failure to file an annual report is an action for a penalty, and subject to the three-year statute of limitations. Code Civ. Pro., § 383, subd. 3, post; *Chapman v. Lynch*, 156 N. Y. 551 (1898). After the cause of action has accrued, neither subsequent partial payments nor the crediting of interest on the debt, prevent the statute of limitations from running against the action for the penalty. *Id.* See also *Blake v. Clausen*, 10 App. Div. 223 (1896); *Rector v. Vanderbilt*, 98 N. Y. 170 (1885); *Lossee v. Bullard*, 79 N. Y. 404 (1880).

**Debts for which directors are liable.**

Where a statute makes officers of a corporation liable for failure to file report, they are only liable for debts incurred subsequent to the failure. *Torbett v. Goodwin*, 62 Hun, 407; 42 N. Y. St. Rep. 323 (1891); *Young v. Goodwin*, 46 N. Y. St. Rep. 934 (1892); *Gold v. Clyne*, 134 N. Y. 262; 31 N. E. Rep. 980 (1892).

The liability of directors for failure to file a report accrues if the debt was contracted and the note given while there was default, although the note did not mature until after the report was filed. A judgment for the debt is not necessary to effect the liability. *Providence Steam & Gas Pipe Co. v. Conall*, 86 Hun, 319 (1895); *Carr v. Risher*, 119 N. Y. 177; 28 N. Y. St. Rep. 260 (1890).

No liability attaches against officers of a corporation for a false report unless the report was filed before the credit was given. *Wetherow v. Slayback*, 11 Misc. Rep. 526; 64 N. Y. St. Rep. 456 (1895).

Bonds issued by a manufacturing corporation incorporated in 1879 under the General Manufacturing Law, having ten years to run and secured by a mortgage deed of trust covering its real property, are debts of the corporation in the meaning of this section, making directors liable therefor if they fail to file the annual report. *Morgan v. Hedstron*, 25 App. Div. 527 (1898).

An unliquidated claim arising out of a breach of a contract of employment is a debt within the meaning of this section. *Green v. Easton* 74 Hun, 329 (1893).

A judgment for costs against the corporation is a debt against the corporation, and the judgment is prima facie evidence of the debt. *Allen v. Clark*, 108 N. Y. 269; 15 N. E. Rep. 387 (1888).

Torts of the corporation are not debts. *Esmond v. Bullard*, 79 N. Y. 404 (1880).

Bonds issued without consideration are not debts upon which recovery can be had under this section. *Norris v. De Wolf*, 76 N. Y. 597 (1879).

**Assignees are creditors.**

The assignee of a contract becomes a creditor and can maintain any action under this section which could be maintained by his assignor, without regard to the consideration paid by him. *Bedford v. Sherman*, 68 Hun, 317; 52 N. Y. St. Rep. 98 (1893); *Allen v. Clark*, 49 N. Y. St. Rep. 175 (1892); *Pier v. George*, 86 N. Y. 613 (1881); *Bonnell v. Wheeler*, 68 N. Y. 294 (1877); *Cornell v. Roach*, 101 N. Y. 373 (1886).

**Recovery of judgment against corporation unnecessary.**

In an action against directors for failure to file an annual report, the recovery of judgment and issue of execution against the corporation is not a prerequisite to recover. *Camp Mfg. Co. v. Reamer*, 14 App. Div. 408 (1897); *rev'g Same v. Herriman*, 18 Misc. Rep. 722 (1897); *Donnelly v. Pancoast*, 15 App. Div. 323 (1897); *Milsom Rendering & Fertilizer Co. v. Baker*, 16 App. Div. 581 (1897); *Rose v. Chadwick*, 9 App. Div. 311 (1896).

A judgment against the corporation is neither conclusive or prima facie evidence of the debt. *Miller v. White*, 50 N. Y. 137 (1872); distinguished in *Stephens v. Fox*, 83 N. Y. 315 (1881), and *Allen v. Clark*, 108 N. Y. 269; 15 N. E. Rep. 387 (1888). But judgment in favor of the corporation in an action for the same debt is conclusive against the plaintiff in an action for failure of directors to file annual report. *Tyng v. Clarke*, 9 Hun, 269 (1877).

**Knowledge presumed.**

Defendant's ignorance of the falsity of such reports is not a defense. *Richards v. Kinsley*, 12 N. Y. St. Rep. 125 (1887); *Huntington v. Attrill*, 118 N. Y. 365; 23 N. E. Rep. 544 (1890); *Torbett v. Eaton*, 113 N. Y. 122; 20 N. E. Rep. 876 (1889).

**Liable for material statements only.**

An immaterial misstatement in an annual report will not be sufficient to render a director liable. *Walton v. Goodwin*, 58 Hun, 87; 33 N. Y. St. Rep. 886 (1890).

**Measure of damages.**

The measure of damages in an action brought against the directors of a stock corporation is the difference between what would have been the value of the stock had its annual report been true, and its actual value. *Parsons v. Johnson*, 28 App. Div. 1 (1898).

**When action abates.**

The action abates on the death of either party, but if judgment has been rendered, it becomes property with all the attributes of a judgment in an action ex contractu. *Carr v. Rischer*, 119 N. Y. 117 (1890); *Blake v. Griswold*, 104 N. Y. 613; 6 N. Y. St. Rep. 493 (1887).

**Filing certificate.**

As to filing certificate to avoid liability for failure to file report, see *Butler v. Swalley*, 101 N. Y. 71; 4 N. E. Rep. 104 (1886).

**Liability of officers for false certificates, reports or public notices.**

§ 31. If any certificate or report made or public notice given by the officers or directors of a stock corporation shall be false in any material representation, the officers and directors signing the same shall jointly and severally be personally liable to any person who has become a creditor or stockholder of the corporation upon the faith of any such certificate, report, notice or any material representation therein to the amount of the debt contracted upon the faith thereof if not paid when due, or of the damage sustained by any purchaser of or subscriber to its stock upon the faith thereof. The liability imposed by this section shall exist in all cases where the contents of any such certificate, report or notice or of any material representation therein shall have been communicated either directly or indirectly to the person so becoming a creditor or stockholder and he became such creditor or stockholder upon the faith thereof. No action can be maintained for a cause of action created by this section unless brought within two years from the time the certificate, report or public notice shall have been made or given by the officers or directors of such corporation.

See notes to preceding section.

**Alteration or extension of business.**

§ 32. Any stock corporation heretofore or hereafter organized under any general or special law of this State may extend or alter its business and powers so as to include any purposes and powers which at the time of such extension may have been conferred by law upon corporations engaged in a business of the same general character, or which might be included in the certificate of incorporation of a corporation organizing under any general law of this State for a business of the same general character, by filing in the manner provided for the original certificate of incorporation an amended certificate, executed by a majority of its directors, stating the extension of business and powers and rights proposed, and that the same has been duly authorized by a vote of stockholders representing at least three-fifths of the capital stock, at a meeting of the stockholders called for the purpose in the manner provided in section forty-five of this chapter, and a copy of the proceedings of such meeting, verified by the affidavit of one of the directors present thereat, shall be filed with such amended certificate.

The exchange of stock as authorized by section 40 is one of the additional powers which may be acquired by an amended certificate filed under this section. *People ex rel. Municipal Gas Co. v. Rice*, 138 N. Y. 151. The court in this case discusses the meaning and intent of this section.

**Sale of franchise and property.**

§ 33. A stock corporation, except a railroad corporation and except as otherwise provided by law, with the consent of two-thirds of its stock, may sell and convey its property, rights, privileges and franchises, or any interest therein or any part thereof to a domestic corporation, engaged in a business of the same general character, or which might be included in the certificate of incorporation of a corporation organizing under any general law of this State for a business of the same general character; and such sale and conveyance shall vest the rights, property and franchises thereby transferred in the corporation to which they are conveyed for the term of its corporate existence, subject to the provisions and restrictions applicable to the corporation conveying them. Before such sale or conveyance shall be made such consent shall be obtained at a meeting of the stockholders called upon like notice as that required for an annual meeting. If any stockholder not voting in favor of such proposed sale or conveyance shall at such meeting, or within twenty days thereafter object to such sale, and demand payment for his stock, he may, within sixty days after such meeting, apply to the supreme court at any special term thereof held in the district in which the principal place of business of such corporation is situated, upon eight days notice to the corporation, for the appointment of three persons to appraise the value of such stock, and the court shall appoint three such appraisers, and designate the time and place of their proceedings as shall be deemed proper, and also direct the manner in which payment for such stock shall be made to such stockholder. The court may fill any vacancy in the board of appraisers occurring by refusal or neglect to serve or otherwise. The appraisers shall meet at the time and place designated, and they or any two of them, after being duly sworn honestly and faithfully to discharge their duties, shall estimate and certify the value of such stock at the time of such dissent and deliver one copy to such corporation, and another to such stockholder if demanded; the charges and expenses of the appraisers shall be paid by the corporation. When the corporation shall have paid the amount of such appraisal, as directed by the court, such stockholders shall cease to have any interest in such stock and in the corporate property of such corporation and such stock may be held or disposed of by such corporation. (Added by L. 1893, ch. 638.)

A manufacturing corporation has power, with the consent of all its stockholders, to sell its plant and machinery to another corporation and to take the stock of the latter in payment therefor. *Holmes & Griggs Mfg. Co. v. Holmes & Wessell Metal Co.*, 127 N. Y. 252; 27 N. E. Rep. 831; 38 N. Y. St. Rep. 155 (1891).

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A corporation cannot cease to exist of its own will. It cannot sell all its property to another corporation for the express purpose of stepping into its shoes, taking all its assets and carrying on its business, and dissenting stockholders can demand that those who did the wrong shall make restitution. *People v. Ballard*, 134 N. Y. 269, 294; 32 N. E. Rep. 54; 48 N. Y. St. Rep. 166 (1892).

Each of the above decisions were rendered before the enactment of section 33.

## ARTICLE III.

## Stock; Stockholders, Their Rights and Liabilities.

## Sec. 40. Issue and transfers of stock.

41. Subscriptions to stock.
42. Consideration for issue of stock and bonds.
43. Time of payment of subscriptions to stock.
44. Increase or reduction of capital stock.
45. Notice of meeting to increase or reduce capital stock.
46. Conduct of such meeting; certificate of increase or reduction.
47. Preferred and common stock.
48. Prohibited transfers to officers or stockholders.
49. Payment by stockholders of mortgage debt pending foreclosure.
50. Application to court to order issue of new in place of lost certificate of stock.
51. Order of court upon such application.
52. Financial statement to stockholders.
53. Exhibition of books by transfer agent of foreign corporation.
54. Liabilities of stockholders.
55. Limitation of stockholder's liability.
56. Increase or reduction of number of shares.
57. Voluntary dissolution.
58. Merger.
59. Change of place of business.
60. Liabilities of officers, directors and stockholders of foreign corporations.

## Issue and transfers of stock.

§ 40. The stock of every stock corporation shall be represented by certificates prepared by the directors and signed by the president or vice-president and secretary or treasurer and sealed with the seal of the corporation, and shall be transferable in the manner prescribed in this chapter and in the by-laws. No share shall be transferable until all previous calls thereon shall have been fully paid in. Any stock corporation, domestic or foreign, now existing or hereafter organized, except monied corporations, may purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor its stock, bonds or other obligations if authorized so to do by a

provision in the certificate of incorporation of such stock corporation, or in any certificate amendatory thereof or supplementary thereto, filed in pursuance of law, or if the corporation whose stock is so purchased, acquired, held or disposed of, is engaged in a business similar to that of such stock corporation, or engaged in the manufacture, use or sale of the property, or in the construction or operation of works necessary or useful in the business of such stock corporation, or in which or in connection with which the manufactured articles, product or property of such stock corporation are or may be used, or is a corporation with which such stock corporation is or may be authorized to consolidate. When any such corporation shall be a stockholder in any other corporation, as herein provided, its president or other officers shall be eligible to the office of director of such corporation, the same as if they were individually stockholders therein and the corporation holding such stock shall possess and exercise in respect thereof, all the rights, powers and privileges of individual owners or holders of such stock. Any stock corporation may, in pursuance of a unanimous vote of its stockholders voting at a special meeting called for that purpose by notice in writing signed by a majority of the directors of such corporation stating the time and place and object of the meeting, and served upon each stockholder appearing as such upon the books of the corporation, personally or by mail at his last-known post-office address at least sixty days prior to such meeting, guarantee the bonds of any other domestic corporation engaged in the same general line of business.

Fraudulent issue of stock, a misdemeanor. Penal Code, § 591, post. Stock, how transferable. § 29, ante.

## Nature of certificates.

The capital stock of a corporation is to be distinguished from the certificates issued by the corporation, usually called stock certificates, which are simply the written evidence of a stockholder's right to participate in the surplus profits. *Williams v. Western Union Tel. Co.*, 9 Abb. N. C. 437 (1881).

Capital stock is the money or property which is put into a single corporate fund by those who become members of a corporation by such subscription, and is the property of the aggregate body. A share is the right to partake of the surplus property of a company on its dissolution. *Burrell v. Bushwick R. R. Co.*, 75 N. Y. 211 (1878).

A share of stock represents the interests which the shareholder has in the capital and net earnings of the corporation. *Jermahn v. Lake Shore & M. S. R. R. Co.*, 91 N. Y. 483 (1883).

Certificates of stock, accompanied with assignments and power of attorney in blank indorsed by the owner, constitute evidence of title. *Esmond v. Apgar*, 76 N. Y. 359 (1879).



**Issuing of stock.**

The making of a certificate of stock and mailing it to the holder is an issuing. *Jones v. Terre Haute & Richmond R. R. Co.*, 57 N. Y. 196 (1874).

Where a corporation having power issues a stock certificate in which it affirms that a designated person is entitled to a certain number of shares, it thereby holds out to persons who may deal in good faith with the person named in the certificate, that he is an owner and has capacity to transfer shares. *Holbrook v. N. J. Zinc Co.*, 57 N. Y. 616 (1874).

Where a certificate of stock is filled out and signed by the president and secretary of a corporation, the person named therein is a stockholder though the certificate is not detached from the stock-book and the company's seal is not affixed thereto. *Halstead v. Dodge*, 51 Super. Ct. 169 (1884); *aff'd*, 103 N. Y. 636.

Where the by-laws of a corporation require all the certificates of its stock to be issued under its seal, and signed by the president and treasurer, those officers may issue stock to themselves in the same manner as they would to others. *Titus v. Great Western Turnpike Road*, 61 N. Y. 237 (1874).

Upon the consolidation of several corporations, a consenting stockholder who has not surrendered his rights may maintain an action against the new corporation to compel the issue of certificates of stock therein and have dividends declared and earnings equitable distributed. *Anthony v. American Glucose Co.*, 49 N. Y. St. Rep. 857 (1893).

The mere fact of the issue of stock by directors upon an attempted organization of a corporation which does not become a corporation de jure does not of itself make the directors liable for a fraudulent conspiracy to issue worthless stock. *Nelson v. Luling*, 62 N. Y. 645 (1875).

Where a corporation has issued a certificate of stock to an administrator in duplication of an alleged loss of a certificate owned by his intestate, the corporation may be compelled to issue the stock to an assignee of the original certificate who never presented the stock for transfer to himself. It is protected, however, in the payment of dividends to the administrator since the stock stands on the books in the name of his intestate. *Brisbain v. Delaware, L. & W. R. R. Co.*, 94 N. Y. 204 (1883).

A subscriber to stock, who has escaped the payment of certain installments thereon by reason of the statute of limitations, cannot enforce the issue of stock to him, for payment of the whole subscription is prerequisite to a right to the certificate. *Johnson v. Albany & Susq. R. R. Co.*, 54 N. Y. 416 (1873).

**Liability of corporation for fraudulent issue.**

A corporation is liable for the acts of its officers in issuing spurious stock. *Titus v. Great Western Turnpike Road*, 61 N. Y. 237 (1874).

The officers and directors of a corporation act as trustees in disposing of its capital stock. *Wil-*

*liams v. Western Union Tel. Co.*, 9 Abb. N. C. 419 (1881).

A corporation is liable for the overissue of its stock to an innocent holder for value. *Archer v. Dunham*, 89 Hun, 387 (1895).

The principles upon which a corporation may be held liable to a bona fide holder of certificates of stock, fraudulently issued or put in circulation by the wrongful or criminal acts of its officers or agents, are governed by the law of principal and agent. The principal is liable to a third person for the fraud or other malfeasance of his agent, perpetrated by the latter in the course of his employment, although he did not authorize, justify or know of the misconduct. *Jarvis v. Manhattan Beach Co.*, 148 N. Y. 652; 43 N. E. Rep. 68 (1896); *aff'd* 75 Hun, 100, and citing N. Y. & N. H. R. R. Co. v. Schuyler, 34 N. Y. 30; Fifth Ave. Bank v. Forty-second St., etc., R. R. Co., 137 N. Y. 231; 33 N. E. Rep. 378; Manhattan Life Ins. Co. v. Forty-second St., etc., R. R. Co., 139 N. Y. 146; 34 N. E. Rep. 776; *Knox v. Eden Musee*, etc., Ass'n, 148 N. Y. 441; 42 N. E. Rep. 988. See also *Hellman v. Forty-second St., etc., R. R. Co.*, 74 Hun, 529 (1893); *Archer v. Dunham*, 89 Hun, 387 (1895).

A corporation is liable to a bona fide holder of a certificate of its stock who sustained a loss in its purchase, where such certificate was prepared, sealed and countersigned by its secretary, who was also its transfer agent, and who forged the name of the president to such certificate. *Fifth Ave. Bank v. Forty-second St., etc., R. R. Co.*, 137 N. Y. 231; 33 N. E. Rep. 378; 55 N. Y. St. Rep. 712 (1893).

Where the president of a corporation obtains possession of a certificate of stock thereof which had been signed by a former president in blank, forged the name of the treasurer, inscribed his own name as stockholder, signed the certificate as transfer agent, which office he had formerly held, and pledged the certificate for a personal loan, no action lies against the corporation for loss resulting to the lender. *Manhattan Life Ins. Co. v. Forty-second St., etc., R. R. Co.*, 139 N. Y. 146; 34 N. E. Rep. 776; 54 N. Y. St. Rep. 474 (1893). So decided on account of the peculiar facts of this case.

A corporation is not prevented from maintaining an action against its former director for fraud in disposing of its stock merely because he has ceased to be a stockholder and director, and although the stock has passed to a bona fide purchaser. *Brooklyn Crosstown R. R. Co. v. Strong*, 75 N. Y. 591 (1878).

**Negotiable character of stock certificates.**

A certificate of capital stock has none of the qualities of commercial paper, and as a general rule a purchaser acquires no better title than his seller had. *Weaver v. Barden*, 49 N. Y. 286 (1872).

While certificates of stock do not possess all the qualities of commercial paper, they do possess some of them as to innocent parties dealing in them. *Jarvis v. Manhattan Beach Co.*, 148 N. Y. 62; 43 N. E. Rep. 68 (1896); *Knox v. Eden Musee Co.*, 148 N. Y. 441; 41 N. E. Rep. 988 (1896).

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Certificates of corporate stock are not clothed with the full character of negotiable paper, and the owner of a certificate, which has been lost without his negligence, or stolen, has the right to reclaim it from the hands of any person in whose possession it subsequently comes, although the holder may have taken it in good faith and for value. *Knox v. Eden Musee American Co.*, 148 N. Y. 441; 41 N. E. Rep. 988 (1896); *rev'g* 74 Hun, 483.

**Transfer of stock.**

The delivery of the certificate of stock with an assignment and power of attorney annexed passes the entire title as between the parties, subject only to such claim as the corporation may have on it. *Cushman v. Thayer Mfg. Jewelry Co.*, 76 N. Y. 365 (1879).

The provisions of the by-laws regarding the transfer of stock in the books of a corporation can be waived at its pleasure and do not operate to prevent the passing of the entire title, legal and equitable, as between the parties, by the delivery of the certificate, with assignment and power of transfer. *Chemical Nat. Bk. v. Colwell*, 132 N. Y. 250; 30 N. E. Rep. 644 (1892).

A delivery of certificates of stock with the power of attorney to transfer them on the books of the company passes the title. *Dunn v. Star Fire Ins. Co.*, 19 Week. Dig. 531 (1884).

The assignment of stock and delivery of certificate with transfer and power of attorney vests the transferee with all the owner's title to the stock, notwithstanding a by-law provides that "no transfer of stock shall be valid unless made on the books of the company by the person owning the stock or his attorney." Until the transfer was made on the books of the corporation, it would be protected in the payment of dividends to the original stockholder and also in admitting the original stockholder to vote at elections. *Smith v. American Coal Co.*, of Alleghany, 7 Lans. 317 (1873).

The purchaser of stock in open market in good faith is protected against a receiver of the property of a previous owner. *Dudley v. Gould*, 6 Hun, 97 (1875).

Though the person to whom a stock certificate is issued be a trustee, if there is no notice of that fact on its face, a purchaser in good faith takes complete title. *Holbrook v. N. J. Zinc Co.*, 52 N. Y. 616 (1874).

Where a corporation issues stock certificates transferable on their face, it is estopped from claiming that the stock is not transferable as against one innocently and in good faith purchasing for value. *Bristol v. West, Bradley, etc., Mfg. Co.*, 36 Super. Ct. 488; *aff'd*, 59 N. Y. 96 (1873).

A shareholder in a corporation is not chargeable with constructive notice of resolution adopted by the board of directors or by provisions in the by-laws regulating the mode in which its business shall be transacted. *Pearall v. Western Union Tel. Co.*, 124 N. Y. 256; 26 N. E. Rep. 534; 35 N. Y. St. Rep. 307 (1891).

Where a certificate of stock states on its face that it is subject to the conditions in the articles

of association, a transferee is bound thereby. *Gibbs v. Long Island Bank*, 83 Hun, 92; 63 N. Y. St. Rep. 854 (1894).

Where a certificate of stock provides that the corporation is entitled to a lien upon it to secure debts due from the owner, a lien of the corporation is superior to that of a pledgee who loans upon it as collateral. *Buffalo German Ins. Co. v. Third Nat. Bank of Buffalo*, 19 Misc. Rep. 564 (1897).

The power to make by-laws regulating the transfer of stock only authorizes the corporation to prescribe the officer by whom the stock shall be transferred and the mode of its transfer, but does not authorize an imposition upon the stock of a provision limiting the unconditional right of transferring it. *Klunan v. Sullivan County Club*, 26 App. Div. 213 (1898).

A shareholder represents himself and his own interests solely, and in no sense acts as a trustee or representative of others. *Gamble v. Queens County Water-Works Co.*, 123 N. Y. 91; 33 N. Y. St. Rep. 88 (1890); *Einstein v. Rochester Gas & Electric Co.*, 146 id. 46; 40 N. E. Rep. 631 (1895).

A subscriber to stock may make a gift of the same without having obtained the possession of the certificate. *DeCaumond v. Bogert*, 36 Hun, 382 (1885).

Where a stockholder has been induced by false and fraudulent statement of directors to sell his stock disadvantageously upon an alternative offer, he is entitled to recover against the directors the amount lost. *Rothmiller v. Stein*, 143 N. Y. 581; 38 N. E. Rep. 718; 60 N. Y. St. Rep. 646 (1891).

**Deposit with trust company.**

An agreement that stock in a corporation shall be deposited with a trust company and not sold for six months would be void as against law and public policy. *Williams v. Montgomery*, 68 Hun, 416; 52 N. Y. St. Rep. 470 (1893).

**Corporation as stockholder.**

A corporation acquiring a controlling interest in the stock of another owes the same duties to the minority stockholders that it owes to its own stockholders, and when it appears that it has used its trust relation for a selfish interest, a court of equity will intervene to protect the minority stockholders. *Farmers' Loan & Trust Co. v. N. Y. & N. R. R. Co.*, 150 N. Y. 410; 44 N. E. Rep. 1043 (1896); *rev'g* 78 Hun, 213. See also *Pondir v. N. Y., L. E. & W. R. R. Co.*, 72 Hun, 384 (1893).

A corporation cannot be restrained from voting upon stock lawfully owned by it on the allegation or proof that it intends to elect a board of directors, who may prejudice the interests of the minority. *Oelbermann v. N. Y. & N. R. R. Co.*, 77 Hun, 332 (1894).

Although a corporation acquires the entire stock of another, yet such other corporation may continue to exist as a corporation. All that takes place is a change in the ownership of the stock. *Einstein v. Rochester Gas & Electric Co.*, 146 N. Y. 46; 40 N. E. Rep. 631 (1895); *aff'g* 77 Hun, 149.

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The provision of this section authorizing a stock corporation to acquire stock of another engaged in a similar business operates to validate a prior acquisition of such stock, although unauthorized at the time when it was made, and such corporation may vote as a stockholder at a subsequent corporate election. *In re Buffalo, N. Y. & Erie R. R. Co.*, 74 N. Y. St. Rep. 345 (1896).

This section applies to railroad corporations. *Oelbermann v. N. Y. & Northern R. R. Co.*, 77 Hun, 332 (1894).

**Subscriptions to stock.**

§ 41. If the whole capital stock shall not have been subscribed at the time of filing the certificate of incorporation, the directors named in the certificate may open books of subscription to fill up the capital stock in such places, and after giving such notices as they may deem expedient, and may continue to receive subscriptions until the whole capital stock is subscribed. At the time of subscribing, every subscriber, whose subscription is payable in money, shall pay to the directors ten per centum upon the amount subscribed by him in cash, and no such subscription shall be received or taken without such payment.

Fraudulent subscriptions. Penal Code, § 590, post. Fraudulent issues of stock. Penal Code, § 591, post. Payment of capital stock of business corporation. Bus. Corp. L., § 5, post.

**What constitutes subscription.**

The placing by an incorporator opposite his name, in the certificate of incorporation, of the number of shares taken by him, is a sufficient subscription for stock and takes effect upon the filing of the certificate. *Phoenix Warehousing Co. v. Badger*, 67 N. Y. 294; aff'g 6 Hun, 293 (1876).

A subscription to stock by a fictitious name, or a firm name, without authority, is binding as the valid subscription of the individual. *Union Hotel Co. v. Hersee*, 79 N. Y. 454; rev'g 15 Hun, 371 (1880).

An agreement to subscribe to stock of a corporation after its formation is not a subscription but a mere promise to subscribe and void as against public policy. *General Electric Co. v. Whitman*, 3 App. Div. 118 (1896).

A subscription to "take stock in and for the construction" of a certain railroad is not a subscription to the capital stock which will sustain an action by the company to recover installments thereon. *Lake Ontario S. R. R. Co. v. Curtiss*, 80 N. Y. 219 (1880).

Though a subscription to the capital stock of a railroad company is not binding until the complete formation of the company, if, after it is formed, the corporation recognizes a subscriber as a stockholder and he ratifies his subscription by payments thereon, he is liable to the full amount of the subscription. *Buffalo & Jamestown R. R. Co. v. Gifford*, 87 N. Y. 294 (1882).

A written agreement to subscribe for stock amounts to a subscription, which the corporation,

when afterward incorporated, can enforce. *Non-Electric Fibre Co. v. Peabody*, 21 App. Div. 247 (1897).

An unconditional agreement to form a corporation and to subscribe to its stock, contemplates no further act upon the part of the person making the agreement and is enforceable by the corporation upon its formation, and the mere fact that the corporation was formed under a different name from that mentioned in the subscription agreement, because of the secretary of State's decision that the name originally adopted was in violation of the General Corporation Law, does not relieve the subscriber from his liability. *Yonkers Gazette Co. v. Taylor*, 30 App. Div. 334 (1898).

**May be on detached papers.**

Subscriptions to stock may be made on separate detached papers. *Sodus Bay & Corning R. R. Co. v. Hamlin*, 24 Hun, 390 (1881); *Buffalo & Jamestown R. R. Co. v. Gifford*, 87 N. Y. 294 (1882).

**Ratification.**

Payment of calls is a ratification of subscription. *Union Hotel Co. v. Hersee*, 79 N. Y. 454; rev'g 15 Hun, 371; *Buffalo & Jamestown R. R. Co. v. Gifford*, 87 N. Y. 294 (1882).

**Is a several contract.**

A subscription to the stock of a corporation is a several contract of each of the subscribers, and a bona fide release of one will not discharge any other in the absence of proof that his subscription was induced by that of the subscriber who was released. The fact that a corporation has abandoned a part of its business is no defense to a subscriber in an action to recover an unpaid balance of its subscription, if it appears there are judgment creditors for more than the amount of the subscription. *Phoenix Warehousing Co. v. Badger*, 67 N. Y. 294; aff'g 6 Hun, 293 (1876); *Whittlesey v. Frantz*, 74 N. Y. 456 (1878).

A secret and collateral contract between the promoter of a corporation and a subscriber to its stock, which provides that he shall not be bound by his subscription or which substantially varies its terms, is void and leaves the subscription unaffected. *Yonkers Gazette Co. v. Jones*, 30 App. Div. 316 (1898).

A subscriber to stock cannot defend an action for his unpaid subscription on the ground that he was induced to subscribe by the subscription of another to whom stock was to be delivered without his paying therefor, and the defendant relied on the genuineness of such subscription, for the reason that such secret agreement, if any, being void, would not guarantee the subscriber who made it from liability. *Armstrong v. Danahy*, 75 Hun, 405; 56 N. Y. St. Rep. 743 (1894).

**Payments at time of subscribing.**

The failure of a subscriber to pay 10 per cent. upon his original subscription does not render it void, as the requirement of the statute only applies to subscriptions subsequent to incorporation.



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United Growers Co. v. Eisner, 22 App. Div. 1 (1897).

Subscription for a stock of a corporation already incorporated and on which no payment was made is not an enforceable contract. *South Buffalo Natural Gas Co. v. Bain*, 9 Misc. Rep. 425; 61 N. Y. St. Rep. 706 (1894); *United Growers Co. v. Eisner*, 22 App. Div. 1 (1897).

A check is not payment in money. *Excelsior Grain Binding Co. v. Stayner*, 25 Hun, 91 (1881).

An agreement by which a note was given, not as an original subscription to stock, but made payable to the order of the defendant, to be of value only on the delivery of the stock to the maker of such note, is not a violation of the statute requiring subscriptions to capital stock to be made in cash. *Boyer v. Fenn*, 19 Misc. Rep. 128 (1897).

### Frauds of promoters.

A subscriber to the stock of a corporation induced to subscribe through fraud on the part of its promoters who were to become the owners of its remaining stock may rescind his agreement, and the corporation consequently has a right to release him from his subscription. *McDermott v. Harrison*, 30 N. Y. St. Rep. 324 (1890).

Subscriptions to capital stock induced by false representations may be set aside by action in equity and installments paid thereon may be recovered. *Talmadge v. Sanitary Security Co.*, 31 App. Div. 498 (1898); *Bosley v. National Machine Co.*, 123 N. Y. 550; 25 N. E. Rep. 990 (1890).

### Object of subscription.

One who subscribes to the capital stock of a corporation must be assumed to have done so to enable it to carry out the legitimate objects for which it was incorporated. *U. S. Vinegar Co. v. Foehrenbach*, 148 N. Y. 58; 43 N. E. Rep. 403 (1895).

### Investment in stock of corporation.

A contract to invest funds in the stock of a corporation not yet formed is fulfilled by investment in the stock of a corporation subsequently formed, identical as to its shareholders and property but of a different name. *Weller v. Tutuill*, 66 N. Y. 347 (1876).

### Consideration for issue of stock and bonds.

§ 42. No corporation shall issue either stock or bonds except for money, labor done or property actually received for the use and lawful purposes of such corporation. No such stock shall be issued for less than its par value. No such bonds shall be issued for less than the fair market value thereof.

Fraudulent issue, criminal. Penal Code, § 501, post. Limitation on indebtedness. § 2, ante.

### Sufficient consideration.

The issuing of stock without consideration is ultra vires and void. *Hatch v. Western Union Tel. Co.*, 9 Abb. N. C. 430 (1881).

A corporation or its directors cannot create any valid stock by issuing the same without any consideration. *Barnes v. Brown*, 80 N. Y. 527 (1880). But see *Christensen v. Eno*, 106 N. Y. 97.

The directors of a corporation have no right to give away its stock, and an agreement to do so will not be enforced in equity. *Thornton v. St. Paul & C. R. R. Co.*, 6 Week. Dig. 309 (Ct. of App. 1878).

Held, under the Manufacturing Act of 1848, that a corporation cannot issue its stock as full-paid in exchange for property at anything less than its par value. *Gamble v. Queens County Water-Works Co.*, 123 N. Y. 91; 25 N. E. Rep. 201; 33 N. Y. St. Rep. 58 (1890).

A leasehold of a building required by a manufacturing corporation is "property." *Close v. Noye*, 147 N. Y. 597; 41 N. E. Rep. 570 (1895).

A debt due to the company for services actually rendered is a sufficient consideration for the issue of stock. *Veeder v. Mudgett*, 95 N. Y. 295 (1884).

The issue of debenture bonds to be paid for by the surrender of stock theretofore issued and a balance only in cash is not a compliance with this section. *Merz v. Interior Conduit & Insulation Co.*, 20 Misc. Rep. 378 (1897).

The exclusive right to sell the product of another corporation is not "property." *Powell v. Murray*, 3 App. Div. (1896).

An issue of stock to the president and director in payment of services may be valid, and where the company does not disaffirm, the fact must be regarded as an affirmation of the issue. *Reed v. Hayte*, 51 Super. Ct. 121 (1885).

### Overvaluation of property.

Where property is purchased and paid for in stock, the transaction will not be set aside unless the inadequacy of the value of the property is so great as to be fraudulent. *Williams v. Western Union Tel. Co.*, 9 Abb. N. C. 437 (1881).

Where stock is issued for property at more than its fair value, the questions of fraud and overvaluation are for the jury. *Powers v. Knapp*, 85 Hun, 38; 66 N. Y. St. Rep. 133 (1895); *White, Corbin & Co. v. Jones*, 86 Hun, 57; 68 N. Y. St. Rep. 48 (1895); *Brown v. Smith*, 80 N. Y. 650; *Lake S. I. Co. v. Drexel*, 90 id. 87; *Douglass v. Ireland*, 73 id. 100; *Schenck v. Andrews*, 57 id. 133; *National Tube W. Co. v. Giffilan*, 124 id. 302; 26 N. E. Rep. 538.

The statute is not violated unless a fictitious value is put upon the property for the purpose of evading the statute and defrauding others. *Van Vleet v. Jones*, 75 Hun, 340 (1890); citing *Whitney Arms Co. v. Barlow*, 63 N. Y. 62; *Pier v. Hanmore*, 86 id. 95; *Bonnell v. Griswold*, 89 id. 122; *Whitaker v. Masterson*, 106 id. 277; 12 N. E. Rep. 604.

The "fair value" of property is its value at the time of the sale. *Huntington v. Attrill*, 118 N. Y. 365; 23 N. E. Rep. 544 (1890).

Where stock is issued with the assent of the stockholders in exchange for property less in value than its par value, the stockholders cannot sue for the return of the stock, nor can a purchaser without notice maintain such action in behalf of

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himself and the other stockholders. *Miller v. University Magazine Co.*, 10 Misc. Rep. 311; 63 N. Y. St. Rep. 128 (1894).

**Bonds.**

It seems that a manufacturing corporation has power to issue its bonds at less than par, and the repeal of the statute of usury, so far as it regards corporations, operates to validate bonds negotiated at less than par. *Gamble v. Queens Co. Water Co.*, 123 N. Y. 91; 25 N. E. Rep. 201 (1890); rev'g 52 Hun. 166; *Ellsworth v. St. Louis, Alton, etc., R. R. Co.*, 98 N. Y. 553 (1885).

Bonds of a corporation taken as a bonus on a stock subscription by a director are not valid, although the stock was worthless. *Duncomb v. N. Y., Housatonic & N. R. R. Co.*, 84 N. Y. 190 (1881). But see *Christensen v. Eno*, 106 id. 97.

A corporation having general power to issue bonds is presumed to have complied with all the provisions of its charter with respect thereto, and a person purchasing such bonds, in the absence of notice, has a right to assume that all restrictions on such power have been complied with. *Ellsworth v. St. Louis, Alton, etc., R. R. Co.*, 98 N. Y. 553 (1885).

**Time of payment of subscriptions to stock.**

§ 43. Subscriptions to the capital stock of a corporation shall be paid at such times and in such installments as the board of directors may by resolution require. If default shall be made in the payment of any installment as required by such resolution, the board may declare the stock and all previous payments thereon forfeited for the use of the corporation, after the expiration of sixty days from the service on the defaulting stockholder, personally or by mail directed to him at his last-known post-office address, of a written notice requiring him to make payment within sixty days from the service of the notice at a place specified therein, and stating that, in case of failure to do so, his stock and all previous payments thereon will be forfeited for the use of the corporation. Such stock, if forfeited, may be reissued or subscriptions therefor may be received as in the case of stock not issued or subscribed for. If not sold for its par value or subscribed for within six months after such forfeiture, it shall be canceled and deducted from the amount of the capital stock. If by such cancellation, the amount of the capital stock is reduced below the minimum required by law, the capital stock shall be increased to the required amount within three months thereafter or an action may be brought or proceedings instituted to close up the business of the corporation as in the case of an insolvent corporation. If a receiver of the assets of the corporation has been appointed, all unpaid subscriptions to the stock shall be paid at such times and in such installments as the receiver or the court may direct.

One-half capital stock of business corporation to be paid in within one year, or corporation dissolved. *Bus. Corp. L.*, § 5, post. See "Receivers of Corporations," post.

**Liability for unpaid subscriptions.**

The board of directors may call for immediate payment of subscriptions to stock, although expressed to be payable "for the purpose of the business." *Williams v. Meyer*, 41 Hun. 545 (1886). (1882).

A subscription for the original stock of a corporation makes the subscriber a stockholder, and no certificate of stock is requisite to make him chargeable as such. *Kohlmetz v. Calkins*, 16 App. Div. 518 (1897).

A subscription is a several contract. A subscriber cannot defend an action for an unpaid subscription on the ground that there was a secret agreement between the promoters and another subscriber that his stock was to be issued without payment, or that he should be released from his subscription. *Phoenix Warehousing Co. v. Badger*, 67 N. Y. 294 (1876); *Whittlesey v. Frantz*, 74 id. 456 (1878); *Armstrong v. Dahany*, 75 Hun. 405 (1894); *Yonkers Gazette v. Jones*, 30 App. Div. 316 (1898).

Liability on subscription is not relieved by extension of time by the legislature to begin construction. *Union Hotel Co. v. Hersee*, 79 N. Y. 454 (1880).

Where corporation has recognized the transferee of stock by the payment of dividends to him, the corporation and its receiver are estopped from collecting amounts remaining unpaid on the subscription from the original subscriber. *Cutting v. Dameral*, 88 N. Y. 410 (1882).

Representation by the assignor of stock, confirmed by the directors of a corporation, to the effect that the stock had been paid in full, would estop the corporation from recovering an unpaid balance from the assignee who took it relying upon such representations. *Rochester & Kettle Falls Land Co. v. Roe*, 7 App. Div. 366 (1896).

Holders of unpaid stock of a corporation can only be made liable when it is shown that the stock has been actually taken by them, or fraudulently received, and not where it has been delivered in good faith and for adequate consideration, by the corporation to the stockholders. *Van Cott v. Van Brunt*, 82 N. Y. 535 (1880).

A person is not liable on his subscription where no persons were named as directors in the article signed, nor did he ever consent or have an opportunity to consent or object to any persons as directors. *Dutchess & Columbia Co. R. R. v. Mabbett*, 58 N. Y. 397 (1874).

**Liability rests on contract.**

An action to charge a person as stockholder for the amount unpaid on stock in his name on the books of a corporation, rests upon contract, and an expressed or implied promise to pay the amount must be shown. *Glenn v. Garth*, 133 N. Y. 18; 30 N. E. Rep. 649; 31 id. 344; 44 N. Y. St. Rep. 80 (1892). So held in reference to a broker purchasing stock. *Id.* See also *Rochester & Kettle Falls Land Co. v. Roe*, 7 App. Div. 366 (1896).

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A person who has received bonus stock issued as fully paid without any agreement on his part to pay the subscription cannot be made to respond to a creditor of the corporation as upon an unpaid subscription. *Christensen v. Eno*, 106 N. Y. 97 (1887).

Where a transferee takes stock supposing it to be fully paid up, in payment of a pre-existing debt, the corporation cannot recover from him the amount unpaid thereon, in the absence of an expressed agreement on his part to make such payment. *Wintringham v. Rosenthal*, 25 Hun, 580 (1881).

**Liability of transferees.**

A transfer of stock with the assent of the corporation transfers the liability for unpaid subscription and the transferor is not liable for calls made after the transfer. *Billings v. Robinson*, 94 N. Y. 415 (1884).

The owners of corporate stock divest themselves of liability when they have actually transferred their stock in the manner provided by law. *Tucker v. Gilman*, 121 N. Y. 189; 27 N. E. Rep. 302; 30 N. Y. St. Rep. 689 (1890).

Where a transferee of stock delivers the same to the corporation, and it is canceled by it and a new certificate issued, the corporation thereby surrenders all claim upon the original stockholder upon his unpaid subscription and accepts the transferee in his place. *Rochester & Kettle Falls Land Co. v. Raymond*, 4 App. Div. 600 (1896).

A person who appears on the books as a stockholder is liable to creditors, though, in fact, he only held it as collateral security. *Rosevelt v. Brown*, 11 N. Y. 148 (1854).

**Interest chargeable.**

Interest is chargeable to a subscriber who has failed to pay his subscription according to its terms. *Gould v. Town of Oneonta*, 71 N. Y. 298 (1877).

**Release of liability.**

Where none of the subscriptions for stock were paid in cash, no business was transacted after incorporation, and the directors held all the stock, they may execute an agreement releasing each other from liability upon their subscriptions. *Non-Electric Fibre Mfg. Co. v. Peabody*, 21 App. Div. 247 (1897).

**Forfeiture.**

The remedy by forfeiture is merely cumulative, and does not deprive the company of its remedy by action. *Buffalo & N. Y. City R. R. Co. v. Dudley*, 14 N. Y. 336 (1856).

The validity of the sale of stock by a corporation, upon which the owner neglects to pay an assessment, must be strictly in accordance with law, and the charter and by-laws of the corporation, otherwise the sale may be set aside at suit of the stockholder. *Mitchell v. Vermont Copper Mining Co.*, 67 N. Y. 280 (1876).

One whose stock has been forfeited is not a stockholder so as to render him liable for non-payment of calls, even though the debt of a cred-

itor was incurred before forfeiture. *Mills v. Stewart*, 41 N. Y. 384 (1869).

After the forfeiture of stock for non-payment of calls, a stockholder is estopped from reclaiming it upon signifying his willingness to pay the calls. *Weeks v. Silver Islet, etc., Co.*, 55 Super. Ct. 1 (1887); *aff'd*, 120 N. Y. 620; 23 N. E. Rep. 1152.

Where default has been made in the payment of installments on stock by the personal representatives of a stockholder, and the stock is sold at auction and purchased for a small sum by a stockholder of the corporation, such stockholder cannot, more than a year after default, make a tender of the amount due for unpaid installments and interest and bring an action to compel the exchange of his stock for new stock under the reorganization. *Dow v. Iowa Central R. R. Co.*, 144 N. Y. 426; 39 N. E. Rep. 398; 63 N. Y. St. Rep. 656 (1895).

**Unpaid subscriptions are assets.**

An unpaid subscription is an asset of a corporation. *Dean v. Biggs*, 25 Hun, 122 (1881).

The stock and property of every corporation is a trust fund for the payment of its debts, and its creditors have a lien and the right to priority of payment over any stockholder. *Bartlett v. Drew*, 57 N. Y. 587 (1874).

The assets of a corporation are a trust fund for the payment of its debts, upon which the creditors have an equitable lien both as against the stockholders and all transferees, except those purchasing in good faith and for value. *Cole v. Millerton Iron Co.*, 133 N. Y. 164; 30 N. E. Rep. 847 (1892).

The assets of a corporation are a trust fund for the payment of its debts in such sense that its creditors have an equitable lien upon them as against those who are not purchasers in good faith as well as against stockholders. *Salt v. Ensign*, 79 Hun, 107; 61 N. Y. St. Rep. 139 (1894).

A stockholder cannot set off personal demands against a corporation in defense of a creditor's demand upon him for his unpaid subscription. *Briggs v. Cornwell*, 9 Daly, 436 (1881).

The receiver of a corporation may prosecute separate actions to recover unpaid subscriptions. *Van Wagenem v. Clark*, 22 Hun, 497 (1881).

**Increase or reduction of capital stock.**

§ 44. Any domestic corporation may increase or reduce its capital stock in the manner herein provided, but not above the maximum or below the minimum, if any, prescribed by law. If increased, the holders of the additional stock issued shall be subject to the same liabilities with respect thereto as are provided by law in relation to the original capital; if reduced, the amount of its debts and liabilities shall not exceed the amount of its reduced capital, unless an insurance corporation, in which case the amount of its debts and liabilities shall not exceed the amount of its reduced capital and other assets. The owner of any stock shall not be relieved from any liability existing prior to the reduction of the capital stock of any stock corporation. If a banking corpo-



ration, whether the capital be increased or reduced, its assets shall at least be equal to its debts and liabilities and the capital stock, as increased or reduced. (Thus amended by L. 1894, ch. 346.)

Frauds in procuring increase of stock, how punishable. Penal Code, § 592, post. Misconduct of officers in procuring increase. Penal Code, §§ 610, 614.

Capital stock can only be increased by or in pursuance of law. There is no implied authority in the officers or stockholders to increase or diminish capital stock. *Einstein v. Rochester Gas & Electric Co.*, 146 N. Y. 46; 40 N. E. Rep. 631; 65 N. Y. St. Rep. 768 (1895); *Sutherland v. Olcott*, 95 N. Y. 100 (1884).

A mere reduction of capital stock does not of itself authorize a distribution between the stockholders of an amount equal to the difference between the original amount and the amount to which the stock is reduced. It must appear that the capital has not been impaired and that the corporation has an amount on hand for the payment of debts and then only the excess should be distributed. *Strong v. Brooklyn Crosstown R. R. Co.*, 93 N. Y. 426 (1883).

A corporation may accumulate its earnings and issue to its stockholders certificates of stock to represent their interest in such accumulations, but it has no power to increase its capital stock for such purpose. *Williams v. Western Union Tel. Co.*, 9 Abb. N. C. 437; 93 N. Y. 162 (1881).

The holders of the original stock are not liable because of a failure to pay in the increased capital; the liability rests solely upon the holders of the increased stock. *Veeder v. Mudgett*, 95 N. Y. 295 (1884).

As to what constitutes an increase of capital stock, see *Einstein v. Rochester Gas & Electric Co.*, 77 Hun, 149; 59 N. Y. St. Rep. 63 (1894).

#### Notice of meeting to increase or reduce capital stock.

§ 45. Every such increase or reduction must be authorized by a vote of the stockholders owning at least a majority of the stock of the corporation, taken at a meeting of the stockholders specially called for that purpose. Notice of the meeting, stating the time, place and object, and the amount of the increase or reduction proposed, signed by a majority of the directors, shall be published once a week, for at least two successive weeks, in a newspaper in the county where its principal business office is located, if any is published therein, and a copy of such notice shall be personally served upon or duly mailed to each stockholder or member at his last-known post-office address at least three weeks before the meeting. (Thus amended by L. 1893, ch. 700.)

#### Conduct of such meeting; certificate of increase or reduction.

§ 46. If, at the time and place specified in the notice, the stockholders shall appear in

person or by proxy, in numbers representing at least a majority of all the shares of stock, they shall organize by choosing from their number a chairman and secretary, and take a vote of those present in person or by proxy, and if a sufficient number of votes shall be given in favor of such increase or reduction, a certificate of the proceedings, showing a compliance with the provisions of this chapter, the amount of capital actually paid in, the whole amount of debts and liabilities of the corporation, and the amount of the increased or reduced capital stock, shall be made, signed, verified and acknowledged by the chairman and secretary of the meeting, and filed in the office of the clerk of the county where its principal place of business shall be located, and a duplicate thereof in the office of the secretary of State. In case of a reduction of the capital stock, except of a railroad corporation, or a monied corporation, such certificate shall have indorsed thereon the approval of the comptroller, to the effect that the reduced capital is sufficient for the proper purposes of the corporation, and is in excess of its debts and liabilities, and in case of the increase, or reduction of the capital stock of a railroad corporation, or a monied corporation, the certificate shall have indorsed thereon the approval of the board of railroad commissioners, if a railroad corporation; of the superintendent of banks, if a corporation formed under or subject to the banking law; and of the superintendent of insurance, if an insurance corporation. When the certificate herein provided for has been filed, the capital stock of such corporation shall be increased or reduced, as the case may be, to the amount specified in such certificate. The proceedings of the meeting at which such increase or reduction is voted, shall be entered upon the minutes of the corporation. If the capital stock is reduced, the amount of capital over and above the amount of the reduced capital shall be returned to the stockholders pro rata at such times and in such manner as the directors shall determine. (Thus amended by L. 1893, ch. 700.)

#### Preferred and common stock.

§ 47. Every domestic stock corporation may have preferred and common stock, and different classes of preferred stock, if the certificate of incorporation so provides or by the unanimous consent of the stockholders, and may, upon the written request of the holder of any preferred stock, by a two-thirds vote of its directors, exchange the same for common stock, and issue certificates for common stock, therefor, share for share, or upon such other valuation as may have been agreed upon in the scheme for the organization of such corporation, or the issue of such preferred stock, but the total

amount of such capital stock shall not be increased thereby.

The right of every shareholder to his proportion of the profits of a corporation is a vested individual right, and in the absence of some power, conferred by statute or the articles of association, to change the relative value of shares by giving some a preference over others, as to dividends, the power cannot be implied, and no such change may be made without the consent of all the shareholders. *Campbell v. Am. Zylonite Co.*, 122 N. Y. 455; 25 N. E. Rep. 853 (1890).

The issuing of stock under a by-law authorizing shares equal in value and right gives the shareholders rights which cannot be divested without their assent, and the corporation cannot thereafter divide the stock into two classes and give one a preference over the other. *Kent v. Quick-silver Mining Co.*, 78 N. Y. 159 (1879).

The issue of stock upon which a certain interest is guaranteed to the holders of the original stock, is not borrowing money on the part of the corporation. *Id.*

The right to dividends on preferred stock vests at the time when sufficient net earnings have been realized to pay the same, and does not pass with a subsequent transfer of the stock. *Boardman v. L. S. & M. S. R. R. Co.*, 8 Week. Dig. 347; *aff'd*, 84 N. Y. 157 (1879).

The holders of preferred guaranteed stock are entitled to dividends before any dividends are paid upon common stock. *Boardman v. L. S. & M. S. R. R. Co.*, 84 N. Y. 157 (1881).

A preferred stockholder whose dividends have not been declared or paid may maintain an action against the company for specific performance and to restrain payment of dividends upon the common stock. *Id.*

Where a corporation has paid dividends on the common stock which should have been applied to dividends on the preferred stock, it may in an action by the preferred stockholders be compelled to pay interest on such dividends. *Boardman v. L. S. & M. S. R. R. Co.*, 84 N. Y. 157 (1881); *Prouty v. The Same*, 85 *id.* 272, 277.

When a certificate of stock contains a provision that the holder is entitled to dividends when in any year the net earnings, after payment of all interest charges, are sufficient for the payment thereof, the rights of the preferred stockholders are beyond the discretion of the directors. *Wood v. Lary*, 47 Hun, 550 (1888).

#### Prohibited transfers to officers or stockholders.

§ 48. No corporation which shall have refused to pay any of its notes or other obligations when due, in lawful money of the United States, nor any of its officers or directors, shall transfer any of its property to any of its officers, directors or stockholders, directly or indirectly, for the payment of any debt, or upon any other consideration than the full value of the property paid in cash. No conveyance, assignment or transfer of any property of any such corporation by it or by any officer, director or stock-

holder thereof, nor any payment made, judgment suffered, lien created or security given by it or by any officer, director or stockholder when the corporation is insolvent or its insolvency is imminent, with the intent of giving a preference to any particular creditor over other creditors of the corporation shall be valid.

Every person receiving by means of any such prohibited act or deed any property of the corporation shall be bound to account therefor to its creditors or stockholders or other trustees.

No stockholder of any such corporation shall make any transfer or assignment of his stock therein to any person in contemplation of its insolvency. Every transfer or assignment or other act done in violation of the foregoing provisions of this section shall be void.

No conveyance, assignment or transfer of any property of a corporation formed under or subject to the banking law, exceeding in value one thousand dollars, shall be made by such corporation, or by any officer or director thereof, unless authorized by a previous resolution of its board of directors, except promissory notes or other evidences of debt issued or received by the officers of the corporation in the transaction of its ordinary business and except payments in specie or other current money or in bank bills made by such officers. No such conveyance, assignment or transfer shall be void in the hands of a purchaser for a valuable consideration without notice.

Every director or officer of a corporation who shall violate or be concerned in violating any provision of this section, shall be personally liable to the creditors and stockholders of the corporation of which he shall be director or an officer to the full extent of any loss they may respectively sustain by such violation.

Actions against officers for fraudulent transfers. Code Civ. Pro., §§ 1781-82, post, "Actions and Proceedings Relating to Corporations."

#### Construction of section generally.

The first part of this section absolutely prohibits the transfer of any corporate property to an officer, director or stockholder of a corporation, which shall have refused to pay any of its obligations when due, upon any other consideration than the full value in cash. But the latter part of the first paragraph has for its object the prevention of preferences to a particular creditor over other creditors of a corporation which is either insolvent or its insolvency is imminent. It does not declare invalid all transfers of property or payments made to creditors of an insolvent corporation, but only such as are made with intent of giving a preference to the creditor over other creditors. *Millbank v. Riethal*, 82 Hun, 537 (1894).

The prohibition of the statute is not limited to the non-payment of notes or obligations. *Cole v.*

Millerton Iron Co., 133 N. Y. 164; 30 N. E. Rep. 847 (1892).

If a transfer is made to creditors of a corporation who were formerly its officers, after such corporation has refused to pay its notes or other obligations, such transfer is valid unless, it is shown further that it was made when the corporation was insolvent or its insolvency was imminent, with intent of giving a preference to a particular creditor over other creditors. *Milbank v. Welch*, 74 Hun, 497 (1893).

### When transfers are in contemplation of insolvency.

Proof of the fact that a corporation is insolvent at the time of transfer is not conclusive evidence that the transfer was made in contemplation of insolvency. *Paulding v. Chrome Steel Co.*, 94 N. Y. 334 (1884).

The term insolvency as used in the statute does not mean a temporary deficiency of assets as compared with the liability of the corporation, but it does apply to inability to carry on its business and meet its obligations promptly. *Onley v. Baird*, 7 App. Div. 95 (1896).

In mortgaging or transferring its property, contemplation of insolvency must be not merely expectation, but anticipation of it, and provision for it so as to prefer the transferee. *New Britain Nat. Bank v. A. B. Cleveland Co.*, 91 Hun, 447 (1895).

An act done by a corporation in the ordinary and usual course of business, uninfluenced by the state of its affairs, cannot be said to have been done in contemplation of insolvency. *Dutcher v. Importers & Traders' Nat. Bk.*, 59 N. Y. 5 (1874). So held in reference to the payment of a check by the officers of a bank, knowing of its insolvency, to a depositor wholly ignorant of its financial condition. *Id.*

### When judgment constitutes preferential transfer.

Merely permitting a creditor to obtain a judgment by default, upon a just claim, is not a transfer or assignment of corporate property, or a judgment suffered within the meaning of this section. *French v. Andrews*, 145 N. Y. 441; 40 N. E. Rep. 214; 65 N. Y. St. Rep. 384 (1895); *aff'g* 81 Hun, 272; 62 N. Y. St. Rep. 759; *Spellman v. Looschen*, 31 App. Div. 94 (1898); *Kingsley v. First Nat. Bank of Bath*, 31 Hun, 329 (1884); *Cummings v. American Geer & Spring Co.*, 87 Hun, 598; 68 N. Y. St. Rep. 653 (1895); *Ridgeway v. Symons*, 4 App. Div. 98 (1896).

An insolvent corporation is not obliged to defend any suit brought against it for the sole purpose of preventing a preference, and it may in such case suffer default, knowing that the creditor designed to obtain, and will thus obtain, a preference. *Varnum v. Hart*, 119 N. Y. 101; 23 N. E. Rep. 183; 28 N. Y. St. Rep. 262 (1890).

The president and managers of a corporation owe no duty to its creditors to resist or prevent the proposed affirmation of a proper judgment against it or to continue an unjust litigation for their benefit. *Inglehart v. Thousand Islands Ho-*

*tel Co.*, 109 N. Y. 454; 16 N. Y. St. Rep. 389 (1888); *rev'g* 32 Hun, 377.

To impeach a judgment suffered by an insolvent corporation as being in violation of a statute forbidding a corporation to make an assignment or transfer of its property in contemplation of insolvency, active procurement of the judgment by some officer of the corporation must be shown. *Dickson v. Mayer*, 35 N. Y. St. Rep. 482.

A judgment against a corporation entered upon an offer of judgment at a time when its commercial paper had been protested and it was insolvent is in violation of the statute. *Braem v. Merchants' Nat. Bank*, 127 N. Y. 508; 28 N. E. Rep. 597 (1891).

Although mere default does not create a preference under this section, the intent to create a preference controls in such case and invalidates the judgment and may be evidenced by acts and conversations of the officers. *Milbank v. De Riesthal*, 82 Hun, 537; 64 N. Y. St. Rep. 199 (1894).

### Creditor's knowledge of insolvency.

A creditor not an officer or stockholder of a corporation may obtain a valid judgment against it, although he knows it to be insolvent when he brings the action. *Home Bank v. J. V. Brewster & Co.*, 15 App. Div. 338 (1897).

The prohibition against the transfer of property by a corporation in contemplation of insolvency does not prevent creditors having valid claims, with knowledge of the insolvency, from bringing actions against the corporation for the purpose of gaining a preference and acting in concert in bringing such actions, nor is it a violation of the statute to arrange with an officer of the corporation upon whom process is served that he shall not disclose the fact of such service to the other officers, nor will such concealment invalidate the judgments. *Varnum v. Hart*, 119 N. Y. 101; 23 N. E. Rep. 183; 28 N. Y. St. Rep. 262 (1890).

### Preferential transfers generally.

For decision avoiding judgments on the ground that they were suffered by the officers of a corporation for the purpose of creating a preference in violation of this section, see *Lopez v. Merchants & Farmers' Nat. Bank*, 18 App. Div. 427 (1897), in which this section is fully discussed.

Where a stockholder and director obtains a preference by an action at law with the co-operation of the other directors, it is unlawful. *King v. Union Iron Co.*, 33 N. Y. St. Rep. 545 (1890).

Where the president of a corporation consents that a debt due to him be divided into several notes, each of which are within the jurisdiction of the City Court of New York, to the end that a foreign assignee of the notes might obtain summonses in that court returnable in two days, and after their service conceals the fact and refrains from putting the corporation in the hands of a receiver until judgment has been obtained and execution levied, the judgments are void under this section which prohibits an insolvent corporation from making transfers with a preferential intent. *Rossmann v. Seaver*, 22 Misc. Rep. 661 (1898).



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The prohibition against a corporation which has refused the payment of its notes, making a transfer of any of its property to any stockholder directly or indirectly for the payment of any debt, applies to a transfer of a claim in favor of the company to a copartnership one of whose members is a stockholder in the corporation. *Jones v. Blun*, 145 N. Y. 333; 39 N. E. Rep. 954; 64 N. Y. St. Rep. 806 (1895).

Where a corporation is insolvent, the directors hold the property in trust primarily for its creditors, and they cannot deal with it for the purpose of paying off their own indebtedness against the company in preference to and in exclusion of other creditors. *Third Nat. Bank of Buffalo v. Elliott*, 42 Hun, 121 (1887).

Under this section a preferential transfer of corporate assets to officers or stockholders in payment of a debt, where other corporate obligations are due and dishonored, is prohibited. *Berwind-White Coal Mining Co. v. Ewart*, 11 Misc. Rep. 490; 64 N. Y. St. Rep. 458 (1895).

A corporate officer in knowledge or contemplation of its actual insolvency cannot effectively provide for a payment of a debt to his wife out of the assets of the corporation to the exclusion of other creditors. *West v. West, Bradley, etc., Co.*, 9 N. Y. St. Rep. 255 (1887).

The prohibition of the acquirement of a preferential lien on its assets by the officer of an insolvent corporation requires the setting aside of a judgment obtained by the wife of such officer on a claim of his assigned to her for the purpose of securing it. *Jefferson County Nat. Bank v. Townley*, 92 Hun, 172; 74 N. Y. St. Rep. 212 (1895).

A judgment suffered to a creditor, who while not a director practically controls the corporation, is void. *Olney v. Baird*, 7 App. Div. 95 (1896).

A transfer by a corporation of all its property, which has the effect of terminating its regular business, and was made and accepted by the transferee with that purpose, is illegal as against creditors of the corporation. *Cole v. Millerton Iron Co.*, 133 N. Y. 164; 30 N. E. Rep. 847 (1892).

A director of an insolvent corporation, who is also a creditor, cannot obtain a preferential lien on the corporate assets through the process of attachment. *Throop v. Hatch Lithographing Co.*, 125 N. Y. 530; 26 N. E. Rep. 742; 35 N. Y. St. Rep. 816 (1891); aff'g 58 Hun, 149; 33 N. Y. St. Rep. 880.

The fact that the transfer of the property of a domestic corporation was made in another State does not relieve the officers from liability. *McQueen v. New*, 87 Hun, 206 (1895).

### Prohibited transfers of stock.

The provisions of this section forbidding a stockholder to make any transfer or assignment of its stock in contemplation of its insolvency, makes such a transfer void as to the persons injured by the transfer, but where there is no fraud as between the transferor and the transferee, nor as against the corporation assenting to the transfer, it is valid; the purpose of the prohibition being to prevent solvent shareholders from escaping from their statutory liability to those who were

creditors of the corporation when the transfer was made, and further to prevent them from escaping from their contractual liability to a corporation not assenting to the transfer. *Sinclair v. Dwight*, 9 App. Div. 297 (1896).

### Actions based on violation of section.

After the return of an execution unsatisfied, a creditor may maintain action against a stockholder who has received property of the corporation to apply the same to the payment of his debt. *Bartlett v. Drew*, 57 N. Y. 587 (1874); *Hastings v. Drew*, 76 Id. 9 (1879). A judgment against a corporation is prima facie evidence of such liability. *Id.* But the creditor must exhaust his remedies against the corporation or its successors. *Sturges v. Vanderbilt*, 73 N. Y. 384 (1878); modifying *Sturges v. Drew*, 11 Hun, 136. But it would seem to be otherwise where the corporation is dissolved. *Hetzel v. Tanne Hill Silver Mining Co.*, 4 Abb. N. C. 40 (1877).

An individual creditor cannot maintain an action to set aside the general assignment of a corporation, upon the ground that a transfer of its second mortgage bonds was made with an intent of giving a preference within the meaning of this section; the right of action is in the first instance in the general assignee. *Koechl v. Leibinger & Oehm Brewing Co.*, 24 Misc. Rep. 298 (1898).

A proceeding instituted by a stockholder not a creditor to set aside judgments against the corporation and the recovery of the property levied upon is not maintainable under this section. *Matter of Gardner*, 86 Hun, 30; 67 N. Y. St. Rep. 69 (1895).

In an action predicated upon an alleged improper issue of stock to the defendant and others, the plaintiff must show that the issue was outstanding when the plaintiff's claim was incurred. *Doyle v. Kimbal*, 23 Misc. Rep. 431 (1898).

### Section not applicable to foreign corporation.

The provisions of this section prohibiting transfers by an insolvent corporation and dealing with it by directors do not apply to foreign corporations. *Worthington v. Pfister Book Binding Co.*, 3 Misc. Rep. 418; 52 N. Y. St. Rep. 448 (1893); *Lane v. Wheelwright*, 69 Hun, 180; 53 N. Y. St. Rep. 368 (1893); *Hiel v. Kulckerbocker Elec. Lt. & Power Co.*, 45 N. Y. St. Rep. 761. And an assignment for the benefit of creditors, made in this State by an insolvent foreign corporation, valid under the law of its domicile, will be recognized as valid here. *Vanderpool v. Gorman*, 140 N. Y. 563; 35 N. E. Rep. 932 (1894); but not if the law under which such assignment is made is in the nature of a bankruptcy act. *Barth v. Backus*, 140 N. Y. 230; 35 N. E. Rep. 425 (1893).

### Corporation can make a general assignment.

A corporation can make a general assignment without preferences. *Vanderpool v. Gorman*, 140 N. Y. 563; 35 N. E. Rep. 932 (1894); *Home Bank v. Brewster*, 17 Misc. Rep. 442 (1896); *Koechl v. Leibinger & Oehm Brewing Co.*, 24 Id. 298 (1898);

contrary to earlier decisions, *Troy Waste Mfg. Co. v. Harrison*, 73 Hun, 528; *Blekness v. Speir*, 45 N. Y. St. Rep. 651 (1892); *Compton v. Mellis*, 46 Id. 563 (1892).

#### Payment by stockholders of mortgage debt pending foreclosure.

§ 49. Whenever default shall be made by any corporation in the payment of principal or interest of any of its bonds secured by mortgage or deed of trust of its property, any stockholder may at any time during the pendency of the foreclosure of such mortgage or deed of trust and before the sale thereunder pay to the mortgagees or grantees in such mortgage or deed, for the use and benefit of the holders of such bonds, a sum equal to such proportion of the amount due and secured to be paid by such mortgage or deed, as his stock in such corporation shall bear to its whole capital stock, and on making such payment he shall to the extent thereof become and be interested in such mortgage or deed and protected thereby.

#### Application to court to order issue of new in place of lost certificate of stock.

§ 50. The owner of a lost or destroyed certificate of stock, if the corporation shall refuse to issue a new certificate in place thereof, may apply to the supreme court, at any special term held in the district where he resides, or in which the principal business office of the corporation is located, for an order requiring the corporation to show cause why it should not be required to issue a new certificate in place of the one lost or destroyed. The application shall be by petition, duly verified by the owner, stating the name of the corporation, the number and date of the certificate, if known, or if it can be ascertained by the petitioner; the number of shares named therein, to whom issued, and as particular a statement of the circumstances attending such loss or destruction as the petitioner can give. Upon the presentation of the petition the court shall make an order requiring the corporation to show cause, at a time and place therein mentioned, why it should not issue a new certificate of stock in place of the one described in the petition. A copy of the petition and order shall be served on the president or other head of the corporation, or on the secretary or treasurer thereof, personally, at least ten days before the time for showing cause.

Provisions of a statute authorizing the court upon summary application to issue a new certificate of stock merely give a cumulative and additional remedy and do not prevent an equitable action to compel the issuance of such stock. *Kinnan v. Forty-second St., etc., R. R. Co.*, 140 N. Y. 183; 35 N. E. Rep. 498; 55 N. Y. St. Rep. 584 (1893).

To compel the issue of stock lost or destroyed, it must be proved that the petitioner is the owner

of the shares, and that such shares had been lost or destroyed and cannot, after due diligence, be found. *Matter of Biglin*, 46 Hun, 223 (1887).

#### Order of court upon such application.

§ 51. Upon the return of the order, with proof of due service thereof, the court shall, in a summary manner, and in such mode as it may deem advisable, inquire into the truth of the facts stated in the petition, and hear the proofs and allegations of the parties in regard thereto, and is satisfied that the petitioner is the lawful owner of the number of shares, or any part thereof, described in the petition, and that the certificate therefor has been lost or destroyed, and cannot after due diligence be found, and that no sufficient cause has been shown why a new certificate should not be issued, it shall make an order requiring the corporation, within such time as shall be therein designated, to issue and deliver to the petitioner a new certificate for the number of shares specified in the order, upon depositing such security, or filing a bond in such form and with such sureties as to the court shall appear sufficient to indemnify any person other than the petitioner who shall thereafter be found to be the lawful owner of the certificate lost or destroyed; and the court may direct the publication of such notice, either before or after making such order as it shall deem proper. Any person claiming any rights under the certificates alleged to have been lost or destroyed shall have recourse to such indemnity, and the corporation shall be discharged from all liability to such person upon compliance with such order; and obedience to the order may be enforced by attachment against the officer or officers of the corporation on proof of his or their refusal to comply with it.

#### Financial statement to stockholders.

§ 52. Stockholders owning five per centum of the capital stock of any corporation other than a monied corporation, not exceeding one hundred thousand dollars, or three per centum where it exceeds one hundred thousand dollars, may make a written request to the treasurer or chief fiscal officer thereof, for a statement of its affairs, under oath, embracing a particular account of all its assets and liabilities, and the treasurer shall make such statement and deliver it to the person presenting the request within thirty days thereafter, and keep on file for twelve months thereafter a copy of such statement, which shall at all times during business hours be exhibited to any stockholder demanding an examination thereof; but the treasurer or such chief fiscal officer shall not be required to deliver more than one such statement in any one year. The supreme court, or any justice thereof, may upon application, for good cause shown, extend the time for making and delivering such cer-



## Stock Corporation Law — §§ 53, 54.

tificate. For every neglect or refusal of the treasurer or other chief fiscal officer thereof to comply with the provisions of this section he shall forfeit and pay to the person making such request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished.

Knowingly making a false statement, a misdemeanor. Penal Code, § 611, post.

The furnishing to a stockholder by the treasurer of a stock corporation of an unverified "statement of its affairs," after a demand for a statement under oath, made by the stockholder pursuant to this section, and the refusal of the treasurer to furnish any other statement, subjects him to a penalty of \$50, and to a further penalty of \$10 for each day's neglect, up to the time when an action for the penalty is begun. *St. John v. Eberlin*, 23 Misc. Rep. 585 (1898).

A demand for a statement of the affairs of the corporation is sufficient, although it does not call for a sworn statement. The failure to require a sworn statement is at most a waiver of the verification. *McCrea v. Bedell*, 9 Misc. Rep. 372 (Gen. T., N. Y. Super. Ct. 1894).

An examination of the books of account of a corporation by a stockholder will not be required by mandamus unless the stockholder has requested a statement pursuant to this section, and been refused. *People ex rel. Clason v. Nassau Ferry Co.*, 86 Hun, 128 (1895).

A statement in detail of assets and liabilities is sufficient. It need not include the business transactions of the company. *French v. McMillan*, 43 Hun, 188 (1887).

#### Stock books of foreign corporations.

§ 53. Every foreign stock corporation having an office for the transaction of business in this State, except moneyed and railroad corporations, shall keep therein a book to be known as a stock-book, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares of stock held by them respectively, the time when they respectively became the owners thereof, and the amount paid thereon. Such stock-book shall be open daily, during business hours, for the inspection of its stockholders and judgment creditors, and any officer of the State authorized by law to investigate the affairs of any such corporation. If any such foreign stock corporation has in this State a transfer agent, whether such agent shall be a corporation or a natural person, such stock-book may be deposited in the office of such agent and shall be open to inspection at all times during the usual hours of transacting business, to any stockholder, judgment creditor or officer of the State authorized by law to investigate the affairs of such corporation. For any refusal to allow such book to be inspected, such corporation and the officer or agent so

refusing shall each forfeit the sum of two hundred and fifty dollars to be recovered by the person to whom such refusal was made. (Thus amended by L. 1897, ch. 384.)

Unlawful refusal to allow inspection of books, a misdemeanor. Penal Code, § 611, post. See decisions cited under § 29, ante.

A demand for the exhibition of the stock-book is not sufficient as a demand for the transfer-book. *Kennedy v. Chicago, Rock Island, etc., R. R. Co.*, 14 Abb. N. C. 326 (1884).

Mandamus directed against the transfer agent — not the corporation — is the proper remedy to compel compliance with this section. *People ex rel. Field v. Northern Pacific R. R. Co.*, 50 N. Y. Super. Ct. 456 (1884); *Hatch v. Lake Shore, etc., R. R. Co.*, 11 Hun, 1 (1877).

Upon hearing of a motion for mandamus, the court may order a reference. *People ex rel. Del Mar v. St. Louis, etc., R. R. Co.*, 44 Hun, 552 (1887).

A stockholder of a foreign corporation having its only office for the transaction of business within this State located within the city of New York, is not bound to accept the offer of the vice-president to allow him to inspect the stock-book at some place other than the office of the company, and cannot be required to go elsewhere for that purpose. He is entitled to recover a penalty for such refusal. *Recknagle v. Empire Self-Lighting Oil Lamp Co.*, 24 Misc. Rep. 193 (1898).

Where a foreign corporation having an office but no transfer agent in this State has failed to comply with the provisions of this section, requiring it to keep in its office a stock-book, a person in the office, but not shown by preponderance of proof to have been an officer of the corporation, cannot be made liable for the statutory penalty, by proof that he answered a demand for its inspection by saying to the stockholder that the book was not in the office, that it could not be shown, and that the only book of that character was in a foreign State. *Greene v. Shain*, 22 Misc. Rep. 720 (1898).

#### Liabilities of stockholders.

§ 54. The stockholders of every stock corporation shall, jointly and severally, be personally liable to its creditors, to an amount equal to the amount of the stock held by them respectively, for every debt of the corporation, until the whole amount of its capital stock issued and outstanding at the time such debt was incurred shall have been fully paid. The stockholders of every stock corporation shall, jointly and severally be personally liable for all debts due and owing to any of its laborers, servants or employees other than contractors, for services performed by them for such corporation. Before such laborer, servant or employee shall charge such stockholder for such services, he shall give him notice in writing, within thirty days after the termination of such services that he intends to hold him liable,



and shall commence an action therefor within thirty days after the return of an execution unsatisfied against the corporation upon a judgment recovered against it for services. No person holding stock in any corporation as collateral security, or as executor, administrator, guardian or trustee, unless he shall have voluntarily invested the trust funds in such stock, shall be personally subject to liability as a stockholder; but the person pledging such stock shall be considered the holder thereof, and shall be liable as stockholder; and the estates and funds in the hands of such executor, administrator, guardian or trustee shall be liable in the like manner and to the same extent as the testator or intestate, or the ward, or person interested in such trust fund would have been, if he had been living and competent to act and held the same stock in his own name, unless it appears that such executor, administrator, guardian or trustee voluntarily invested the trust funds in such stocks, in which case he shall be personally liable as a stockholder.

Business corporation not to incur debts until capital stated in certificate as amount with which it will begin business is paid in. *Bus. Corp. L.*, § 3, post. See notes to next section.

### Construction.

A statute imposing personal liability for corporate debts must be strictly construed as in derogation of the common law. *Chase v. Lord*, 77 N. Y. 1; *rev'g* 16 Hun, 369 (1879); *Barnes v. Wheaton*, 80 Hun, 8; 61 N. Y. St. Rep. 492 (1894).

### Effect of section.

The liability of the stockholders of a manufacturing corporation under the act of 1848 was preserved under the Stock Corporation Law of 1890, and also as amended in 1892, as to debts of a corporation incurred before its adoption, and the repeal of the act of 1848. This is by virtue of the saving clause contained in the original act of 1890 and continued in the Statutory Construction Law of 1892. *Close v. Potter*, 155 N. Y. 145 (1898).

### Liability is contractual.

Liability under this section is not penal, but is in the nature of a contract obligation. It survives the death of a stockholder and continues against his executors. The statutory obligation is inherent in and forms a part of every contract that the corporation makes with creditors. *Cochran v. Wiechers*, 119 N. Y. 399; 23 N. E. Rep. 803 (1890).

The personal liability of stockholders of a corporation for its debts is not in the nature of a penalty or forfeiture, but is a contractual liability enforceable as such in any State having jurisdiction of the persons, unless an exclusive remedy is provided in the State where the corporation is organized. *Marshall v. Sherman*, 84 Hun, 186; 65 N. Y. St. Rep. 316 (1895).

### Actions to enforce liability.

A creditor may maintain an action against all the stockholders for the benefit of all the creditors who choose to come in for the establishment of a fund and the adjustment of the claims thereon. *Pfohl v. Simpson*, 74 N. Y. 137 (1878).

Where there are several creditors of a corporation, the stockholders of which are liable for its debts, a suit may be brought by one creditor in behalf of all and equitable relief granted. *United Glass Co. v. Vary*, 79 Hun, 103; 61 N. Y. St. Rep. 181 (1894); *aff'd*, 152 N. Y. 121; 46 N. E. Rep. 312. In such action separate suits of other creditors may be enjoined. *Code Civ. Pro.*, § 448; *Farnsworth v. Wood*, 91 N. Y. 308, 314 (1883).

A creditor may maintain an action against a single stockholder, *Weeks v. Love*, 50 N. Y. 568 (1872); but a stockholder sued by a single creditor of a corporation seeking to charge him with the debt of a company may, however, set off a claim against the company. *Christensen v. Colby*, 43 Hun, 362 (1887); *Richards v. Kinsley*, 12 N. Y. St. Rep. 125 (1887).

The court may require the joinder of several actions brought by separate creditors against individual stockholders of an insolvent corporation, to the end that the rights of all creditors and liabilities of all stockholders may be determined by one action. *Bagley & Sewall Co. v. Ehrlicher*, 8 App. Div. (1896).

It was held in *Farnsworth v. Wood*, 91 N. Y. 308 (1883), that the right of action to enforce a stockholder's liability was not vested in a receiver of the corporation, but is to be enforced by the creditor in his own right for his own especial benefit.

Where the charter of a corporation has expired, a creditor cannot maintain an action against the stockholders to charge them with payment of his debt. *Andrews v. Vanderbilt*, 37 Hun, 468 (1885).

It must appear that defendant was the owner of stock at the time the debt accrued. *Tucker v. Gilman*, 121 N. Y. 189; 24 N. E. Rep. 302 (1890).

A transfer of stock in violation of section 48 does not relieve the transferor from liability to creditors. *Sinclair v. Dwight*, 9 App. Div. 297 (1896).

The fact that a subscription was induced by fraud is no defense to a creditor's action to enforce liability under this section. *Moosbrugger v. Walsh*, 89 Hun, 564 (1895).

Held, under the former statute, all that is necessary to be shown is that a valid debt has been contracted before the capital stock has been paid in. *National Tube Works Co. v. Gilfillan*, 124 N. Y. 302; 26 N. E. Rep. 538; 35 N. Y. St. Rep. 357 (1891).

The provision of the Manufacturing Act making stockholders of a corporation liable for debts of the company to the extent of the capital stock held by them until the whole amount of the capital has been paid in and a certificate thereof filed, does not apply in favor of a creditor who was, at all the times covered by the action, a director of the company. *McDowall v. Sheehan*, 129

## Stock Corporation Law — § 55.

N. Y. 200; 29 N. E. Rep. 299; 41 N. Y. St. Rep. 415 (1891).

All rights appertaining to the ownership of stock are vested in an executor, although the stock is issued to him in his representative capacity. Matter of the Ferry Co., 63 Barb. 556; In re Santa Eulalia Silver Mining Co., 21 N. Y. St. Rep. 89.

As to the issue of stock for property, see § 42, and cases cited.

### Liability to laborers, servants and employes.

L. 1848, ch. 40, § 18, made the stockholders of manufacturing corporations severally individually liable for debts owing to "laborers, servants and apprentices." L. 1850, ch. 140, § 10, made the stockholders of railroad corporations liable for debts owing to its "laborers and servants, other than contractors." Section 54 includes "employes," which has been given a broader construction than "laborer" or "servant." In construing such terms the courts have held that the terms "laborer" and "servant" refer to persons engaged in menial employment or employment involving manual labor, while the term "employee" includes all persons serving the corporation for compensation, who are not officers or contractors, without regard to the nature of the work or the manner or time in which the compensation is paid. A large number of cases have been collated under section 8 of the Labor Law in the portion of this work relating to "receivers." That section makes the receiver liable to the "employes" of the corporation, and all decisions construing it are applicable to section 54 in which the same term is used.

For further construction of the term "employee," see *Gurney v. Atlantic & Gt. Western R. R. Co.*, 58 N. Y. 353 (1874). In *Wakefield v. Fargo*, 90 N. Y. 214 (1882), a bookkeeper was held not to be a "laborer, servant or apprentice," but the decision would probably have been otherwise under the above section. In *Hill v. Spencer*, 61 N. Y. 274 (1874), an agent to take charge of mines was held not a "laborer, servant or apprentice."

An attorney-at-law employed, but not exclusively by a corporation, at a salary of \$50 per week, and not having his office in any building nor upon any property belonging to the corporation, is not a laborer, servant, employee or contractor within the meaning of this section. *Bristol v. Kretz*, 22 Misc. Rep. 55 (1898).

### Limitation of stockholder's liability.

§ 55. No action shall be brought against a stockholder for any debt of the corporation until judgment therefor has been recovered against the corporation, and an execution thereon has been returned unsatisfied in whole or in part, and the amount due on such execution shall be the amount recoverable, with costs against the stockholder. No stockholder shall be personally liable for any debt of the corporation not payable within two years from the time it is contracted, nor unless an action for its collection shall be brought against the corporation within two

years after the debt becomes due; and no action shall be brought against a stockholder after he shall have ceased to be a stockholder, for any debt of the corporation, unless brought within two years from the time he shall have ceased to be a stockholder.

The liability is secondary, to be resorted to only after the remedies against the corporation itself have been exhausted. *National Bk. of Auburn v. Dillingham*, 147 N. Y. 603, 611; 42 N. E. Rep. 338 (1895).

The liability of the corporation for the purpose of this section accrues when the debt becomes due, not at the maturity of a note given to secure it. *Jagger Iron Co. v. Walker*, 76 N. Y. 521 (1879); *Hardman v. Sage*, 124 N. Y. 25; 26 N. E. Rep. 354 (1891); *Griffeth v. Green*, 37 N. Y. St. Rep. 705 (1891). A creditor, therefore, by accepting a note to secure his debt may forfeit his right to enforce the personal liability of the stockholders.

A stockholder ceases to be such for the purposes of this section upon the appointment of a permanent receiver in an action to sequester its property, and an order restraining its officers and agents from interfering with it. *Hollingshead v. Woodward*, 107 N. Y. 96; 13 N. E. Rep. 621 (1887).

The Statute of Limitations does not begin to run in favor of a stockholder until the return of execution against the corporation. *Handy v. Draper*, 89 N. Y. 334 (1882).

Where the liability for the debts of a corporation is conditional, condition must be fulfilled. *Jessup v. Carnegie*, 80 N. Y. 441; rev'g 44 Super. Ct. 260 (1880).

A judgment against the corporation, and return of execution, are conditions precedent to the commencement of an action to enforce the liability of a stockholder. *Handy v. Draper*, 89 N. Y. 334 (1882); *U. S. Glass Co. v. Levett*, 24 Misc. Rep. 429 (1898); *Berwind-White Coal Mining Co. v. Ewart*, 90 Hun, 60 (1895).

The recovery of a judgment in another State in a proceeding in rem, and return of execution thereon are not sufficient. The statute requires the recovery of a judgment and the issue of an execution in this State. *Rocky Mountain Nat. Bk. v. Bliss*, 89 N. Y. 338 (1882).

An action cannot be predicated upon a judgment which, after entry and return of execution unsatisfied, is vacated, a new trial had, and a new judgment entered. *Terry v. Rothschild*, 83 Hun, 486 (1895).

Previous decisions have only dispensed with the condition precedent of a judgment and execution. 1. Where the corporation has been dissolved by judicial decree; (2) where by final judgment in an action for sequestration, a perpetual injunction has been issued restraining suits by creditor, and (3) where, by statute, such suits are prohibited. In all these cases there intervenes an impossibility within the meaning of the law, which excuses the performance of the condition precedent. *United Glass Co. v. Vary*, 152 N. Y. 121; 46 N. E. Rep. 312 (1897), citing *Hardman v. Sage*, 124 N. Y. 25; 26 N. E. Rep. 354; *Shellington v. Howland*, 53 N. Y. 371; *Kincaid v. Dwinelle*, 59 id. 548; *Hunting v. Blum*, 143 id. 511; 38 N. E. Rep. 716. See *Cuykendall v. Corning*, 88 N. Y. 129.

An order restraining creditors from commencing or prosecuting any action, made as a mere preliminary and precautionary order in a suit by a stockholder against the corporation for the appointment of a receiver, does not excuse a creditor who has made no effort to procure a modification of the order, from proceeding to judgment and execution against the corporation before bringing an action to enforce the liability of a stockholder. *United Glass Co. v. Vary*, 152 N. Y. 124; 46 N. E. Rep. 312 (1897).

That the defendant has not been the owner of stock within two years prior to the commencement of the action is a matter of affirmative defense. *Castner v. Duryea*, 16 App. Div. 249 (1897).

In an action by a receiver for an assessment it is fair to conclude that some of the debts were payable within one year from the time of contraction. *Cuykendall v. Douglas*, 19 Hun, 577 (1880).

Where an action is brought against a stockholder to enforce the statutory liability, a defense, first, that the corporation had property subject to levy and sale under the execution when it was returned unsatisfied; and, second, that the return was made by the sheriff acting in collusion with the plaintiff, can only be sustained by establishing both propositions. *Berwick-White Mining Co. v. Wadsworth*, 27 App. Div. 550 (1898).

The judgment against the corporation is of no virtue or effect in the action against the stockholder, and is only evidence as proving the performance of the condition precedent. *Wheeler v. Miller*, 24 Hun, 541 (1881); *Kincaid v. Dwinelle*, 59 N. Y. 551; *Truesdell v. Chumar*, 75 Hun. 416 (1894).

Mr. Cook, in his work on *Stock and Stockholders* (3d ed.), § 224, concludes that in New York a judgment against the corporation is not even prima facie evidence of the amount or validity of the claim. Citing *McMahon v. Macey*, 51 N. Y. 155 (1872); *Miller v. White*, 50 id. 137 (1872); *Esmond v. Bullard*, 16 Hun, 65 (1878). The question, however, does not seem to be free from difficulty. The case of *Miller v. White* was an action brought against trustees to enforce a penal liability for failure to file an annual report, and the court very properly held that in an action to enforce an independent penal liability of the stockholder, the judgment against the corporation should not be evidence of liability; and this is doubtless the law under section 30. In *McMahon v. Macey*, the judge writing the prevailing opinion, said, in effect, that if the judgment was to be regarded as conclusive of a debt against the stockholder, it would be barred by the general Statute of Limitations, and the action would be defeated for the additional reason that the judgment was not recovered until more than two years after the defendant had parted with his stock and ceased to be liable as a stockholder. In other words, both of these decisions did not involve the same situation as would be presented by an action under section 55, or section 10 of the act of 1848, which preceded it. In *Stephens v. Fox*, 83 N. Y. 318, the action was brought under the General Railroad Law (L. 1850, ch. 140, § 10, as am. by L. 1854, ch. 282), which provided "that each stockholder shall be individually liable to

the creditors of such company to an amount equal to the amount unpaid on the stock held by him, for all the debts and liabilities of such company, until the whole amount of the capital stock so held by him shall have been paid to the company." It was held that a judgment against the corporation was competent evidence of the plaintiff's status as a creditor and of the amount of his claim. The court said: "The liability of the stockholder is not created or enlarged by the statute. It rests upon his contract with the corporation, and the creditor is simply subrogated to the claim of the corporation against the debtor, in case he avails himself of his right under the statute to pursue the stockholder as such debtor to the corporation. A payment by the stockholder to the creditor, upon a recovery by him under the statute, will discharge the stockholder pro tanto from his indebtedness to the corporation." The court distinguishes *Miller v. White* and *McMahon v. Macey* upon the ground, that the defendant in each of those cases was not pursued as a debtor to the corporation, or for any pre-existing liability of his own, but upon an original liability created by the statute.

Under section 54 the liability for debts is substantially the same as under L. 1848, ch. 40, § 10, from which it was revised, but in section 55, to the condition formerly contained in section 24 of the act of 1848, are added the words "and the amount due on such execution shall be the amount recoverable, with costs against the stockholder." Of course, the liability under sections 54 and 55 is not a liability to the corporation as was the case in *Stephens v. Fox*. It is not a penal liability as in the case of *Miller v. White*. *Cochran v. Wilchers*, 119 N. Y. 399; 23 N. E. Rep. 803. The decision in *McMahon v. Macey*, as we have suggested, would have been the same, if the judgment had been held conclusive against the stockholder. But whatever may have been the effect of the decisions prior to 1890, it seems that some force must be given to the additional words in section 55.

For the purpose of the liability of a stockholder, a person becomes the legal owner of stock from the time of its purchase, although the certificate may not be transferred to him on the books of the corporation until after the debt he is charged with accrued. *Washburn & Moen Mfg. Co. v. Clarke*, 43 N. Y. St. Rep. 709 (1892).

#### Increase or reduction of number of shares.

§ 56. A stock corporation may provide that the number of shares into which its capital stock is divided shall be increased or reduced by a two-thirds vote of all the stock duly represented at a meeting held and conducted in like manner, and upon filing a like certificate, as required for the increase or reduction of its capital stock. If such increase or reduction of the number of shares be so authorized, the corporation shall issue to each stockholder certificates for as many shares of the new stock as equal in par value the shares of the old stock held by him, upon surrender and cancellation of such old stock. This section does not authorize the



## Stock Corporation Law — §§ 57, 58.

increase or reduction of the capital stock of such corporation. (Added by L. 1893, ch. 196.)

See §§ 45, 46, ante, for manner of conducting meeting.

**Voluntary dissolution.**

§ 57. Any stock corporation, except a moneyed or a railroad corporation, may be dissolved before the expiration of the time limited in its certificate of incorporation or in its charter as follows: The board of directors of any such corporation may at a meeting called for that purpose upon, at least, three days' notice to each director, by a vote of a majority of the whole board, adopt a resolution that it is in their opinion advisable to dissolve such corporation forthwith, and thereupon shall call a meeting of the stockholders for the purpose of voting upon a proposition that such corporation be forthwith dissolved. Such meeting of the stockholders shall be held, not less than thirty nor more than sixty days after the adoption of such resolution, and the notice of the time and place of such meeting so called by the directors shall be published in one or more newspapers published and circulating in the county wherein such corporation has its principal office, at least once a week for three weeks successively next preceding the time appointed for holding such meeting, and on or before the day of the first publication of such notice, a copy thereof shall be served personally on each stockholder, or mailed to him at his last-known post-office address. Such meeting shall be held in the city, town or village in which the last preceding meeting of the corporation was held, and said meeting may, on the day so appointed, by the consent of a majority in interest of the stockholders present, be adjourned from time to time, and notice of such adjournment shall be published in the newspapers in which the notice of the meeting was published. If at any such meeting the holders of two-thirds in amount of the stock of the corporation, then outstanding, shall, in person or by attorney, consent that such dissolution shall take place and signify such consent, in writing, then, such corporation shall file such consent, attested by its secretary or treasurer, and its president or vice-president, together with the powers of attorney signed by such stockholders executing such consent by attorney, with a statement of the names and residences of the then existing board of directors of said corporation, and the names and residences of its officers duly verified by the secretary or treasurer or president of said corporation, in the office of the secretary of State. The secretary of State shall thereupon issue to such corporation, in duplicate, a certificate of the filing of such papers and that it appears therefrom that such corporation has complied with this

section in order to be dissolved, and one of such duplicate certificates shall be filed by such corporation in the office of the clerk of the county in which such corporation has its principal office; and thereupon such corporation shall be dissolved and shall cease to carry on business, except for the purpose of adjusting and winding up its business. The board of directors shall cause a copy of such certificate to be published at least once a week for two weeks in one or more newspapers published and circulating in the county in which the principal office of such corporation is located, and at the expiration of such publication, the said corporation by its board of directors shall proceed to adjust and wind up its business and affairs with power to carry out its contracts and to sell its assets at public or private sale, and to apply the same in discharge of debts and obligations of such corporation, and, after paying and adequately providing for the payment of such debts and obligations, to distribute the balance of assets among the stockholders of said corporation, according to their respective rights and interests. Said corporation shall nevertheless continue in existence for the purpose of paying, satisfying and discharging any existing debts or obligations, collecting and distributing its assets and doing all other acts required in order to adjust and wind up its business and affairs, and may sue and be sued for the purpose of enforcing such debts or obligations, until its business and affairs are fully adjusted and wound up. (Added by L. 1896, ch. 932.)

Proceedings for voluntary dissolution through the intervention of a court, and the appointment of a receiver. Code Civ. Pro., §§ 2419-31, post, "Actions and Proceedings Relating to Corporations."

**Merger.**

§ 58. Any stock corporation lawfully owning all the stock of any other stock corporation organized for, or engaged in business similar or incidental to that of the possessor corporation may file in the office of the secretary of State, under its common seal, a certificate of such ownership, and of the resolution of its board of directors to merge such other corporation, and thereupon it shall acquire and become, and be possessed of all the estate, property, rights, privileges and franchises of such other corporation, and they shall vest in and be held and enjoyed by it as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation, and be managed and controlled by the board of directors of such possessor corporation, and in its name, but without prejudice to any liability

## Stock Corporation Law — §§ 59, 60.

ties of such other corporation or the rights of any creditors thereof. (Added by L. 1896, ch. 932.)

Does not authorize a combination in the nature of a monopoly or in unlawful restraint of trade. § 7, ante.

#### Change of place of business.

§ 59. Any stock corporation now existing or hereafter organized under the laws of this State, except moneyed corporations, may at any time change its principal office and place of business from the city, town or county named in its certificate of incorporation, or to which it may have been changed under the provisions of this section, to any other city, town or county in this State, in which it may desire to actually transact and carry on its regular business from day to day, provided, and such change has been authorized by a vote of the stockholders of said corporation at a special meeting of stockholders called for that purpose. When such change shall be authorized by the stockholders as herein provided, the president and secretary and a majority of the directors of such corporation shall sign a certificate stating the name of said corporation, the city, town and county where its principal office and place of business was originally located, and to which it may have been subsequently changed, and the city, town and county to which it is desired to change its said principal office and place of business, and that it is the purpose of said corporation to actually transact and carry on its regular business from day to day at such place, and that such change has been authorized as herein provided, and the names of the directors of said corporation and their respective places of residence, which certificate shall be verified by the oaths of all the per-

sons signing the same, and when so signed and verified, shall be filed in the office of the secretary of State and a duplicate thereof in the office of the clerk of the county from which said principal office and place of business is about to be removed or changed, and another in the office of the clerk of the county to which said removal or change is to be made, and thereupon the principal office and place of business of such corporation shall be changed as stated in said certificate. (Added by L. 1896, ch. 929.)

#### Liabilities of officers, directors and stockholders of foreign corporations.

§ 60. Except as otherwise provided in this chapter the officers, directors and stockholders of a foreign stock corporation transacting business in this State, except moneyed and railroad corporations, shall be liable under the provisions of this chapter, in the same manner and to the same extent as the officers, directors and stockholders of a domestic corporation, for:

1. The making of unauthorized dividends;
2. The creation of unauthorized and excessive indebtedness;
3. Unlawful loans to stockholders;
4. Making false certificates, reports or public notices;
5. An illegal transfer of the stock and property of such corporation, when it is insolvent or its insolvency is threatened;
6. The failure to file an annual report.

Such liabilities may be enforced in the courts of this State, in the same manner as similar liabilities imposed by law upon the officers, directors and stockholders of domestic corporations. (Added by L. 1897, ch. 384.)

See §§ 23, 24, 25, 30, 31, 48, ante, for liability of domestic corporations; also Penal Code, §§ 331, 394, 610, 611, 614, post.

## PART IV.

## THE BUSINESS CORPORATIONS LAW, AS AMENDED TO THE COMMENCEMENT OF THE SESSION OF 1899.

(L. 1890, ch. 567.)

An Act in relation to business corporations, constituting chapter 41 of the General Laws.

## CHAPTER XLI OF THE GENERAL LAWS.

## The Business Corporations Law.

Sec. 1. Short title and limitation of chapter.

2. Incorporation.

3. Restrictions upon commencement of business.

4. Reorganization of existing corporations.

5. Payment of capital stock.

6. Full liability corporations.

7. [Rep. by L. 1895, ch. 671.]

8. Consolidation of corporations.

9. Submission of consolidation agreement to stockholders.

10. Powers of consolidated corporations.

11. Transfer of property of old corporations to consolidated corporations.

12. Rights of creditors of old corporations.

13. District steam corporations.

14. Examination of meters by agent of district steam corporations.

15. Entry by agent of district steam corporation to cut off steam.

16. Water companies.

## Short title and limitation of chapter.

Section 1. This chapter shall be known as the business corporations law.

See note to General Corporation Law, section 1, as to the application of that law and the Stock Corporation Law to business corporations.

## Incorporation.

§ 2. Three or more persons may become a stock corporation for any lawful business purpose or purposes other than a moneyed corporation, or a corporation provided for by the banking, the insurance, the railroad and the transportation corporation laws, by making, signing, acknowledging and filing a certificate which shall contain:

1. The name of the proposed corporation.

2. The purpose or purposes for which it is to be formed.

3. The amount of the capital stock, and if any portion be preferred stock, the preferences thereof.

4. The number of shares of which the capital stock shall consist, each of which shall not be less than five nor more than one hundred dollars, and the amount of capital

not less than five hundred dollars, with which said corporation will begin business.

5. The city, village or town in which its principal business office is to be located.

6. Its duration.

7. The number of its directors, not less than three nor more than thirteen.

8. The names and post-office addresses of the directors for the first year.

9. The names and post-office addresses of the subscribers and a statement of the number of shares of stock which each agrees to take in the corporation.

The certificate may contain any other provision for the regulation of the business and the conduct of the affairs of the corporation and any limitation upon its powers and upon the powers of its directors and stockholders which does not exempt them from any obligation or from the performance of any duty imposed by law. (Thus amended by L. 1896, chs. 369 and 460.)

## Name.

Name must not conflict. Gen. Corp. L., § 6, ante. After incorporation may be changed. Code Civ. Pro., §§ 2411-18, "Actions and Proceedings Relating to Corporations," post.

## Object.

A corporation may be formed under this chapter for any business, that may be lawfully pursued by an individual, except as limited in the first paragraph. Business may be altered or extended by supplemental certificate. Stock Corp. L., § 32, ante.

Persons seeking to form a corporation under any general law have a reasonable latitude as to what they may insert in their certificate of incorporation, in addition to that required by law. They may insert other provisions not inconsistent with law or public policy which are germane to the purposes of the corporation and necessary, convenient or appropriate to the accomplishment of such purpose. *People ex rel. Fairchild v. Preston*, 140 N. Y. 549; 35 N. E. Rep. 979; 56 N. Y. St. Rep. 480 (1894).

## Stock.

Certificate may provide for preferred and common stock, and different classes of preferred stock. Stock Corp. L., § 47, ante. After incorporation capital stock may be increased or reduced. Stock Corp. L., §§ 44-46, ante. Number of shares may be increased or reduced. Stock Corp. L., § 56, ante. Capital stock need not all be subscribed at time of incorporation, but books may



be opened after incorporation. Stock Corp. L., § 41, ante. Amount of capital stated in certificate must be paid in before debts are incurred. § 3, post. One-half of capital stock must be paid in within one year. § 5, post.

### Principal office.

Location fixes place for taxation of corporation. Gen. Corp. L., § 3, subd. 9, ante; Tax L., § 11, post. Reports to assessors to contain statement of location of principal office. Tax L., § 27, post. Location may be changed. Stock Corp. L., § 59.

### Duration.

Corporate existence may be extended within three years before expiration of term. Gen. Corp. L., § 32, ante. There is no limitation as to the term, which may be stated in the certificate.

### Directors.

At least two to be residents of State. Gen. Corp. L., § 29, ante. Change of number. Stock Corp. L., § 21, ante. Certificate may provide for cumulative voting at elections of directors. Gen. Corp. L., § 20, ante. If a director ceases to be a stockholder, his office becomes vacant. Stock Corp. L., § 20, ante. So held under a similar statute, now repealed, *Chemical Nat. Bk. v. Colwell*, 132 N. Y. 250; 30 N. E. Rep. 644 (1892). Also held under former statute, that one named as a trustee in the certificate may act as such, although not a stockholder. *McDowell v. Sheehan*, 129 N. Y. 200; 29 N. E. Rep. 299 (1891). It would seem that the provisions of section 20, Stock Corporation Law, only relate to directors subsequently elected, and do not apply to directors named in the certificate of incorporation. It would be better policy, however, for a director to acquire at least one share of stock.

### Subscribers.

Must be of full age, at least two-thirds citizens of United States, and one a resident of State. Gen. Corp. L., § 4, ante.

Incorporators cannot agree upon the terms and conditions of the certificate of incorporation through an attorney, but the mere act of signing a certificate, under the direction of the proposed incorporators, may be performed by an agent. *N. Y., Lackawanna, etc., R. R. Co. v. Union Steamboat Co.*, 35 Hun, 220 (1885); *Matter of Petition of N. Y., L. & W. R. R. Co.*, 99 N. Y. 12.

A person who has subscribed to the stock of a corporation need not sign the certificate of incorporation. The certificate requires the names and post-office addresses of the subscribers to stock, but it does not require that this shall be signed by the individual subscriber. All that is needed is the fact, which may be stated by any person possessing the required knowledge. *Yonkers Gazette Co. v. Taylor*, 30 App. Div. 334 (1898).

### Additional regulations.

The provision of the last paragraph is also in Gen. Corp. L., § 10, ante. Certificate may provide for acquiring stock of other corporations. Stock Corp. L., § 40, ante.

### Acknowledgment.

Before whom acknowledgments may be taken. See Stat. Const. L., § 15, post, and notes.

### Certificate.

Must be in English, and filed in office of secretary of State, and a certified copy or duplicate original in the office of the county clerk of the county in which the principal business office is to be located. Gen. Corp. L., § 5, ante. Informality or defect may be corrected, or unauthorized matter stricken out by supplemental certificate. Gen. Corp. L., § 7, ante.

### Fees and taxes.

For fees to be paid to secretary of State and county clerk for filing and recording certificate, see "Miscellaneous Laws Affecting Corporations," post. Organization tax. Tax L., § 180, post.

### Liability of stockholders.

The liability of stockholders is fixed by Stock Corp. L., §§ 54-55, ante, unless the certificate states that the corporation is to be a full liability corporation, as provided by § 6, post.

### Commencement of business.

Must not incur debts until capital specified in certificate as the amount with which it will begin business has been paid in. § 3, post. Must commence business within two years or corporate powers cease. Gen. Corp. L., § 31, ante.

### Restrictions upon commencement of business.

§ 3. No such corporation shall incur any debts until the amount of capital specified in its certificate of incorporation, as the amount of capital with which it will begin business, shall have been paid in in money or property. (Thus amended by L. 1895, ch. 671.)

Individual liability of stockholders until full capital is paid in. Stock Corp. L., §§ 54-55, ante. At least one-half of capital stock must be paid in within one year. § 5, post.

### Reorganization of existing corporations.

§ 4. Any stock corporation heretofore organized, except a moneyed or transportation corporation, or a corporation the business of which partakes of the nature of banking or insurance, may incorporate under this chapter in the following manner: The directors of the corporation shall call a meeting of the stockholders thereof by publishing a notice, stating the time, place, and object of the meeting, signed by at least a majority of them, in a newspaper of the county in which its principal business office is situated once a week, for, at least, three successive weeks, and by serving upon each stockholder, at least three weeks before the meeting a copy of such notice either personally or by de-

positing it in the post-office, postage prepaid, addressed to him at his last-known post-office address. The stockholders shall meet at the time and place specified in the notice and organize by choosing one of the directors chairman, and a suitable secretary, and shall then take a vote of those present in person or by proxy upon the proposition to re-incorporate under this chapter, and if votes representing a majority of all the stock of the corporation shall be cast in favor of the proposition, the officers of the meeting shall execute and acknowledge a certificate of the proceedings, which certificate shall also contain the statements required by section two of this chapter, and shall be filed in the offices where certificates of incorporation under this chapter are required to be filed. From the time of such filing such corporation shall be deemed to be a corporation organized under this chapter, and if originally organized or incorporated under a general law of this State, it shall have and exercise all such rights and franchises as it has heretofore had and exercised under the laws pursuant to which it was originally incorporated, and such reorganization shall not in any way affect, change or diminish the existing liabilities of the corporation. (Thus amended by L. 1895, ch. 671.)

Notice to stockholders need not be given if waived in writing by every stockholder or by his attorney thereunto authorized. Gen. Corp. L., § 38, ante.

This section is permissive. It leaves it optional with the stockholders whether they will reorganize or not, and in case they do not, their corporate existence is unaffected. *Close v. Potter*, 2 Misc. Rep. 1 (1892).

A corporation reorganizing under this section need not pay a reorganization tax. See cases cited under Tax L., § 180, post.

A corporation cannot under this section extend its corporate existence or change the character of its business, but such extension should be made under the provisions of the General and Stock Corporation Law. *People ex rel. Haberman v. James*, 5 App. Div. 412 (1896).

Where a reorganized corporation takes the assets of the old corporation under a bill of sale, its liabilities are limited by the terms of the bill of sale, and not extended by subsequent resolution of the directors. *Fernschild v. Yuengling Brewing Co.*, 15 App. Div. 29 (1897).

The reorganization of a corporation does not make the new corporation the same as the old. The right to be a corporation which the old corporation had was not changed and was not sold and did not pass to purchasers. They only obtain such a right upon filing the certificate and then they obtain it by direct grant from the State, and not in any degree by the sale and purchase of the franchises, etc., of the old corporation. *People ex rel. Mertens v. Cook*, 110 N. Y. 443 (1888).

### Payment of capital stock.

§ 5. One-half of the capital stock of every such corporation shall be paid in within one year from its incorporation, or the corporation shall be dissolved, and the directors within thirty days after such payment, shall make a certificate of the fact of such payment, which shall be signed and acknowledged by a majority of the directors, and verified by the president or vice-president and secretary or treasurer, and filed in the offices where the certificates of incorporation are filed. The dissolution of any such corporation for any cause shall not take away or impair any remedy against it, its stockholders or officers, for any liabilities incurred previous to its dissolution.

No time is fixed by statute for the payment of the entire capital stock, but until the capital stock issued and outstanding is paid in, the stockholders are individually liable for all debts. Stock Corp. L., § 54. Board of directors may fix times for payment of capital stock. Stock Corp. L., § 43, ante. This certificate should not be presented to the secretary of State at the same time as the certificate of incorporation, for the reason that until the certificate of incorporation is filed there is no corporation, and consequently there are no officers to execute the certificate of payment for stock. As to acknowledgment by president or vice-president and secretary or treasurer, see decisions under Stock Corp. L., § 30, which requires annual report to be verified by same officers. Dissolution does not occur *ipso facto* on failure. See cases cited under Code Civ. Pro., § 1798, post, "Actions and Proceedings Relating to Corporations."

The intent of this section is to save the rights of creditors as they existed at the time of dissolution. *Gold v. Clyne*, 134 N. Y. 262; 31 N. E. Rep. 980 (1892).

The certificate must be verified. *Hardman v. Sage*, 124 N. Y. 25; 26 N. E. Rep. 354 (1891).

Failure to file a certificate that capital stock is paid in where the stock is issued for property, gives no cause of action in the absence of fraud. *Rowell v. Lambert*, 66 Hun. 4; 49 N. Y. St. Rep. 197 (1892).

The last sentence cannot be qualified by what precedes, and reaches beyond the contingency of the particular dissolution previously referred to, and applies to every case of corporate dissolution. *Marstaller v. Mills*, 143 N. Y. 398; 38 N. E. Rep. 370 (1894).

### Full liability corporations.

§ 6. Every corporation formed under this chapter may be or become a full liability corporation by inserting a statement in the certificate of incorporation, that the corporation thereby formed is intended to be a full liability corporation; and in case of an existing corporation, which is not a full liability corporation, it may become such by filing in the offices where certificates of incorporation are required to be filed, a supplemental cer-

tificate stating that thereafter the corporation intends to be a full liability corporation, which certificate shall be executed and acknowledged by the president and treasurer of the corporation or by the board of directors, and shall have annexed thereto a copy of a resolution, adopted by a two-thirds vote of the board of directors and the written consent of all the stockholders of the corporation, authorizing and consenting to the change of the corporation to a full liability corporation. If the corporation is formed as or becomes a full liability corporation all the stockholders of the corporation shall be severally individually liable to its creditors for all its debts and liabilities, and may be joined as defendants in any action against it. No execution shall issue against any stockholder individually until execution has been issued against the corporation and returned unsatisfied, and all the stockholders shall contribute a proportionate share, according to the number of shares of stock owned by each, of the amount paid by any stockholder on a judgment recovered against him individually for a debt of the corporation, and he may recover from the other stockholders in the corporation in a joint or several action the proper portion due by them and each of them, of the amount paid by him on any such judgment.

See decisions under Stock Corp. L., §§ 54, 55, for general principles governing liability.

An action may be commenced after a suit has been commenced against the corporation, but execution cannot issue until execution against the corporation has been returned unsatisfied. *Walton v. Coe*, 110 N. Y. 109. The provision for a joint action against the stockholders is permissive. *Id.*

The liability is not penal, but survives the death of a stockholder, and continues against his personal representative. *Cochran v. Wiechers*, 119 N. Y. 399; 23 N. E. Rep. 803 (1890); citing *Bailey v. Hollister*, 26 N. Y. 112; *Lowry v. Inman*, 46 id. 119; *Wiles v. Suydam*, 64 id. 173.

#### Extension of business.

§ 7. (Repealed by L. 1895, ch. 671.)

Now covered by Gen. Corp. L., § 32, ante.

#### Consolidation of corporations.

§ 8. Any two or more corporations organized under the laws of this State for the purpose of carrying on any kind of business of the same or of a similar nature, which a corporation organized under this chapter might carry on, may consolidate such corporations into a single corporation, as follows: The respective corporations may enter into and make an agreement signed by a majority of their respective boards of directors and under their respective corporate seals, for the consolidation of such corporations, prescribing the terms and conditions

thereof, the mode of carrying the same into effect, the name of the new corporation, the number of directors who shall manage its affairs, not less than three nor more than thirteen, the names and post-office addresses of the directors for the first year, the term of its existence, not exceeding fifty years, the name of the town or towns, county or counties, in which its operations are to be carried on, the name of the town or city and county in this State in which its principal place of business is to be situated, the amount of its capital stock, which shall not be larger in amount than the fair aggregate value of the property, franchises and rights of such corporations, and the number of shares into which the same is to be divided, the manner of distributing such capital stock among the holders thereof, and if such corporations, or either of them, shall have been organized for the purpose of carrying on any part of its business in any place out of this State, the agreement shall so state, with such other particulars as they may deem necessary. (Thus amended by L. 1895, ch. 671.)

The fees for filing such certificate to be paid to the secretary of State are \$10; for recording, fifteen cents per folio; to be paid to county clerk, for filing, six cents; for recording, ten cents, per folio, see p. 78. If the capital stock of the new corporation, exceeds the aggregate capital stock of the constituent corporations, an organization tax of one-eighth of 1 per cent, must be paid on such excess. Tax L., § 180, post.

Under section 33 of the Stock Corp. L., ante, a corporation may sell its franchises and property to a corporation engaged in a business of the same general character, and thus practically accomplish consolidation, or may sell all its stock to another corporation, pursuant to section 40 of the Stock Corporation Law, and then pursuant to section 57 of the Stock Corporation Law, a certificate of merger may be filed, which practically accomplishes the same result.

The section only authorizes the consolidation of corporations engaged in the same or a similar line of business. *Cameron v. N. Y. & M. V. Water Co.*, 133 N. Y. 336; 31 N. E. Rep. 104 (1892); *Young v. Rondout & Kingston Gas Light Co.*, 129 N. Y. 57 (1891).

Statutes for the consolidation of domestic corporations are to be treated as acts of incorporation, and on consolidation being effected under their provisions the constituent companies, unless such an intention is excluded by the language of the statute, are deemed to be dissolved and their powers and faculties vested in the consolidated company as a new corporation. *People v. N. Y., Chicago, etc., R. R. Co.*, 129 N. Y. 474; 29 N. E. Rep. 959; 42 N. Y. St. Rep. 90 (1892).

This section limits the amount of capital of a consolidated corporation to the net value of the property, franchises and rights of the corporations consolidating and in excess of their respective liabilities. *Langan v. Fracklyn*, 29 Abb. N. C. 102 (1892).



The statutory liability of a consolidated corporation for the debts and liabilities of its constituent corporations cannot be impaired by any agreement between the corporations, as to creditors who have not joined in or assented to the agreement. *Matter of Utica Nat. Brewing Co.*, 154 N. Y. 268 (1897). But where the agreement is to the effect that the consolidated corporations shall owe no debts on account of the constituent corporations, the claim of an assenting stockholder to payment from the assets of the consolidated corporation, in case of its insolvency, of an obligation of a constituent corporation held by him, is barred. *Id.*

#### Submission of consolidation agreement to stockholders.

§ 9. Such agreement shall be submitted to the stockholders of each of such corporations, at a meeting thereof to be called upon notice of at least two weeks, specifying the time, place and object thereof, and addressed to each at his last-known post-office address, and deposited in the post-office, postage prepaid, and published for at least two successive weeks in one of the newspapers in each of the counties of this State in which either of such corporations shall have its place of business, and if such agreement shall be approved at each of such meetings of the respective stockholders separately, by the vote by ballot of the stockholders owning at least two-thirds of the stock, the same shall be the agreement of such corporations, and a sworn copy of the proceedings of such meetings, made by the secretaries thereof, respectively, and attached thereto, shall be presumptive evidence of the holding and action of such meetings. Such agreement and verified copy of proceedings of such meetings shall be made in duplicate, one of which shall be filed in the office of the secretary of State, and the other in the office of the clerk of the county where the principal business office of the new corporation is to be situated in this State, and thereupon such corporations shall be merged into the new corporation specified in such agreements, to be known by the corporate name therein mentioned, and the provisions of such agreement shall be carried into effect as therein provided. If any stockholder, not voting in favor of such agreement to consolidate, shall at such meeting, or within twenty days thereafter, object to such consolidation and demand payment for his stock, such stockholder or such new corporation, if the consolidation takes effect at any time thereafter, may at any time within sixty days after such meeting apply to the supreme court at any special term thereof held in the district in which any county is situated in which such new corporation may have its place of business, upon at least eight days notice to the new corporation, for the appointment of three persons to appraise the value of such stock and the court shall ap-

point three such appraisers and designate the time and place of their first meeting, with such directions in regard to their proceedings as shall be deemed proper, and also direct the manner in which payment for such stock shall be made to such stockholder. The court may fill any vacancy in the board of appraisers occurring by refusal or neglect to serve or otherwise. The appraisers shall meet at the time and place designated, and they or any two of them, after being duly sworn honestly and faithfully to discharge their duties, shall estimate and certify the value of such stock at the time of such dissent, and deliver one copy to such new corporation, and another to such stockholder if demanded; the charges and expenses of the appraisers shall be paid by the new corporation. When the new corporation shall have paid the amount of such appraisal, as directed by the court, such stockholder shall cease to have any interest in such stock and in the corporate property of such corporation, and such stock may be held or disposed of by such new corporation.

As to when stockholder is entitled to interest on value of appraised stock, see *Trask v. Peekskill Plow Works*, 6 Hun, 236.

This section providing for the appointment of appraisers of the stock of a dissenting stockholder is not the sole remedy in case injustice is done and he may seek relief in equity. *Langan v. Francklyn*, 29 Abb. N. C. 102 (1892).

#### Powers of consolidated corporations.

§ 10. Such new corporation in addition to the general powers of corporations shall enjoy the rights, franchises and privileges possessed by each of the corporations so consolidated, subject to the restrictions, liabilities, duties and provisions contained in this chapter so far as the same may be applicable to the purposes for which it shall have been organized and expressed in the agreement for consolidation, and may prosecute or carry on any kind of business which each of the consolidating corporations was authorized by law to conduct.

#### Transfer of property of old corporations to consolidate corporations.

§ 11. Upon such consolidation and organization of such new corporation, all and singular the rights, privileges, franchises and interests of every kind belonging to or enjoyed by the corporations so consolidated, and every species of property, real, personal and mixed, and things in action thereunto belonging, mentioned in such agreement of consolidation, shall be deemed to be transferred and vested in, and may be enjoyed by, such new corporation, without any other deed or transfer; and such new corporation shall hold and enjoy the same, and all rights of property, privileges, franchises and interests in the same manner and to the same

extent as if the several corporations so consolidated had continued to retain the title and transact the business of such corporations, and the title to real and personal property and rights and privileges acquired and enjoyed by either of the corporations shall not revert or be impaired by such consolidation, or anything relating thereto.

#### **Rights of creditors of old corporations.**

§ 12. The rights of creditors of any corporation that shall so be consolidated shall not in any manner be impaired, nor any liability or obligation for the payment of any money due or to become due to any person or persons, or any claim or demand for any cause existing against any such corporation or against any stockholder thereof be released or impaired by any such consolidation; but such new corporation shall succeed to and be held liable to pay and discharge all such debts and liabilities of each of the corporations consolidated in the same manner as if such new corporation had itself incurred the obligation or liability to pay such debt or damages and the stockholders of the respective corporations consolidated shall continue, subject to all the liabilities, claims and demands existing against them as such, at or before the consolidation; and no action or proceeding then pending before any court or tribunal in which any corporation that may be so consolidated is a party, or in which any such stockholder is a party, shall abate or be discontinued by reason of such consolidation, but may be prosecuted to final judgment, as though no consolidation had been entered into; or such new corporation may be substituted as a party in place of any corporation so consolidated, by order of the court in which such action or proceeding may be pending.

#### **District steam corporations.**

§ 13. Any corporation now or hereafter incorporated for the purpose of supplying steam to consumers from a central station or stations through pipes laid in the public streets, shall be known as a district steam corporation and upon the application in writing of the owner or occupant of any building or premises, within one hundred feet of any street main laid down by any such corporation, and payment by him of all money due from him to it, such corporation shall supply steam as may be required for heating such building or premises, notwithstanding there may be rent or compensation in arrears for steam supplied, or for meter, pipe or fittings furnished to a former occupant thereof, unless such owner or occupant shall have undertaken or agreed with the former occupant to pay or to exonerate him from the payment of such arrears, and shall refuse or neglect to pay the same; and if, for the space of twenty days after such application, and the deposit, if required, of a rea-

sonable sum to cover the cost of connection and two months' steam supply, the corporation shall refuse or neglect to supply steam as required, it shall forfeit to such applicant the sum of ten dollars and the further sum of five dollars for every day thereafter during which such refusal or neglect shall continue; but no such corporation shall be required to lay a service pipe for the purpose of supplying steam to any applicant where the ground in which such pipe is required to be laid shall be frozen, or otherwise present serious obstacles to laying the same, nor unless the applicant, if required, shall deposit in advance with the corporation a sum of money sufficient to pay for two months' steam supply and the cost of the necessary connections and of the erection of a meter and such other special apparatus as are required for use in connection with such steam supply, nor unless the applicant shall provide the space and right of way necessary for the erection, maintenance and use of such connections and apparatus, and signify his assent in writing to the reasonable regulations of the corporation with reference to the supply of steam to consumers.

#### **Examination of meters by agent of district steam corporations.**

§ 14. Any such corporation may make an agreement with any of its customers, by which any of its officers or agents shall be authorized at all reasonable times to enter any dwelling, store, building, room or place, supplied with steam by such corporation and occupied by such customer, for the purpose of inspecting and examining the meters, devices, pipes, fittings and appliances for supplying or regulating the supply of steam, and for ascertaining the quantity of steam consumed, or the quantity of water resulting from the condensation of steam consumed. Every such agreement shall further provide that such officer or agent shall exhibit his written authority if requested by the occupant of such dwelling, store, building, room or place. Any person who shall directly or indirectly prevent or hinder such officer or agent from entering such dwelling, store, building, room or place, or from making such inspection or examination, in violation of such agreement, shall forfeit to the corporation the sum of twenty-five dollars for each offense.

#### **Entry by agent of district steam corporation to cut off steam.**

§ 15. If any person or persons, corporation or association supplied with steam by any such corporation, shall neglect or refuse to pay the rent or remuneration for such steam, or for the meter, device, pipes, fittings or appliances, let by such corporation for supplying steam, or for ascertaining the quantity of steam consumed, or the quantity of water resulting from the condensation

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Business Corporations Law — § 16.

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of the steam consumed, agreed upon or due for the same, as required by his, their or its contract with such corporation, the latter may thereupon stop and prevent the steam from entering the premises of such person, persons, corporation or association, so neglecting or refusing to pay such rent or remuneration, and may also in any case, in which a person is liable to pay a forfeiture, or to a fine or imprisonment, by reason of any act to or towards such corporation or its property for which such forfeiture, fine or penalty is imposed by law, stop and prevent the steam from entering the premises of the person so liable, or if such person be an officer or agent of any corporation or association, stop and prevent the steam from entering the premises of such corporation or association. In all cases in which such corporation is authorized to stop and prevent the steam from entering any premises, it may, by its officers, agents, or workmen, enter into or on such premises between the hours of eight o'clock in the forenoon and six o'clock in the afternoon and cut off, disconnect, separate and carry away any meter, device, pipe, fitting or other property of the corporation; and may cut off, disconnect and

separate any meter, device, pipe or fitting, whether the property of the corporation or not, from the mains or pipes of such corporation.

**Water companies.**

§ 16. No corporation shall be formed under this chapter for the purpose of accumulating, storing, conducting, furnishing or supplying water for domestic, manufacturing or municipal purposes in the city of New York. Any corporation formed for the purpose of supplying any other city of the State with water, if unable to agree with the owners of any real property required for the purpose of the corporation for the purchase thereof may acquire title thereto by condemnation.

It seems that a water corporation may be formed under this act for a purpose not included in section 80 of the Transportation Corporations Law, except in the city of New York. Section 80 of the Transportation Corporations Law provides for the formation of water companies "for the purpose of supplying water to any of the cities, towns or villages, and the inhabitants thereof in this State."



## PART V.

## MISCELLANEOUS LAWS AFFECTING CORPORATIONS.

1. Defense of usury.
2. Acknowledgment by corporation.
3. Proof in this State of organization of foreign corporation.
4. How negotiable bonds are made non-negotiable.
5. Provisions of Labor Law; hours of labor; payment of wages; factories; employment of women and children.
6. Employes to be allowed time to vote.
7. Fees of secretary of State.
8. Fees of county clerk.
9. Act to prevent monopolies.
10. Federal Anti-Trust Law.

## 1. Defense of Usury.

(L. 1850, ch. 172.)

Section 1. No corporation shall hereafter interpose the defense of usury.

§ 2. The term corporation, as used in this act, shall be construed to include all associations, and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships.

## 2. Acknowledgment by Corporation.

(Real Property Law, L. 1896, ch. 547.)

**Acknowledgment by corporation and form of certificate.**

§ 258. The acknowledgment of a conveyance or other instrument by a corporation, must be made by some officer thereof authorized to execute the same by the board of directors of said corporation. The certificate of acknowledgment must be in substantially the following form, the blanks being properly filled.

STATE OF NEW YORK, }  
County of ..... } ss.:

On the ..... day of ..... in the year ....., before me personally came ..... to me known, who, being by me duly sworn, did depose and say that he resided in .....; that he is the (president or other officer) of the (name of corporation), the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation,

and that he signed his name thereto by like order.

(Signature and office of officer taking acknowledgment.)

If such corporation have no seal, that fact must be stated in place of the statements required respecting the seal.

## 3. Proof in this State of Organization of Foreign Corporation.

(L. 1877, ch. 311.)

Section 1. Whenever, by the laws of any other State or territory or the dominion of Canada, a copy of the certificate of organization or incorporation or any other certificate, certified or exemplified by any officer or officers in such State or territory or dominion, is, or shall be prima facie evidence of the due formation, creation, existence, organization or capacity of any corporation or joint-stock company, created, organized or located in such State, territory, or dominion, or claiming so to be, such certificate or certificates, duly exemplified, or a duly exemplified copy thereof, shall be received in all actions and proceedings in this State, in or before all courts and officers, with the same force and effect in all respects as prima facie evidence as aforesaid, as in such other State, territory or dominion.

## 4. How Negotiable Bonds are Made Non-Negotiable.

(Negotiable Instruments Law, L. 1897, ch. 612.)

**How negotiable bonds are made non-negotiable.**

§ 332. The owner or holder of any corporate or municipal bond or obligation (except such as are designated to circulate as money, payable to bearer), heretofore or hereafter issued in and payable in this State, but not registered in pursuance of any State law, may make such bond or obligation, or the interest coupon accompanying the same, non-negotiable, by subscribing his name to a statement indorsed thereon, that such bond, obligation or coupon is his property; and thereon the principal sum therein mentioned is payable only to such owner or holder, or his legal representatives or assigns, unless such bond, obligation or coupon be transferred by indorsement in blank, or payable to bearer, or to order, with the addition of the assignor's place of residence.

**5. Provisions of Labor Law.**

(L. 1897, ch. 415.)

**Hours to constitute a day's work.**

§ 3. Eight hours shall constitute a legal day's work for all classes of employes in this State, except those engaged in farm and domestic labor, unless otherwise provided by law. This section does not prevent an agreement for overwork for extra compensation.

This section applies to work for the State or a municipal corporation, or for contractors therewith.

The wages for such public work shall be not less than the prevailing rate for a legal day's work in the same trade or calling in the locality where the work is performed. Every contract for the construction of a public work, shall contain a provision that the same shall be void and of no effect unless such rate is paid by the contractor to his employes.

It was held by the Court of Appeals in *McCarthy v. Mayor, etc.*, of New York, 96 N. Y. 1, that the intent of the act regulating the number of hours in a legal day's work was to place the control of the hours of labor within the discretion of the employe, giving him the privilege, at his option, of refusing to work beyond the eight hours, or to receive extra compensation for extra work, by stipulation in the contract of employment.

In the absence of such a stipulation, there is no intent to confer a right upon an employe to charge for more than one day's labor for services rendered in any calendar day.

**Hours of labor on street surface and elevated railroads.**

§ 5. Ten consecutive hours' labor, including one-half hour for dinner shall constitute a day's labor in the operation of all street surface and elevated railroads, of whatever motive power, owned or operated by corporations in this State, whose main line of travel or whose routes lie principally within the corporate limits of cities of more than one hundred thousand inhabitants. No employe of any such corporation shall be permitted or allowed to work more than ten consecutive hours, including one-half hour for dinner, in any one day of twenty-four hours. In cases of accident or unavoidable delay, extra labor may be performed for extra compensation.

**Hours of labor in brickyards.**

§ 6. Ten hours, exclusive of the necessary time for meals, shall constitute a legal day's work in the making of brick in brickyards owned or operated by corporations. No corporation owning or operating such brickyard shall require employes to work more than ten hours in any one day, or to commence work before seven o'clock in the morning.

But overwork and work prior to seven o'clock in the morning for extra compensation may be performed by agreement between employer and employe.

**Regulation of hours of labor on steam surface and elevated railroads.**

§ 7. Ten hours' labor, performed within twelve consecutive hours, shall constitute a legal day's labor in the operation of steam surface and elevated railroads owned and operated within this State, except where the mileage system of running trains is in operation. But this section does not apply to the performance of extra hours of labor by conductors, engineers, firemen and trainmen in case of accident or delay resulting therefrom. For each hour of labor performed in any one day in excess of such ten hours, by any such employe, he shall be paid in addition at least one-tenth of his daily compensation. No person or corporation operating a line of railroad of thirty miles in length or over, in whole or in part within this State, shall permit or require a conductor, engineer, fireman or trainman, who has worked in any capacity for twenty-four consecutive hours, to go again on duty or perform any kind of work, until he has had at least eight hours' rest.

**Cash payment of wages.**

§ 9. Every manufacturing, mining, quarrying, mercantile, railroad, street railway, canal, steamboat, telegraph and telephone company, every express company, and every water company, not municipal, shall pay to each employe engaged in its business the wages earned by him in cash. No such company or corporation shall pay its employes in scrip, commonly known as store money orders.

**When wages are to be paid.**

§ 10. Every corporation or joint-stock association, or person carrying on the business thereof by lease or otherwise, shall pay weekly to each employe the wages earned by him to a day not more than six days prior to the date of such payment. But every person or corporation operating a steam surface railroad shall, on or before the twentieth day of each month, pay the employes thereof the wages earned by them during the preceding calendar month.

**Penalty for violation of preceding sections.**

§ 11. If a corporation or joint-stock association, its lessee or other person carrying on the business thereof, shall fail to pay the wages of an employe as provided in this article, it shall forfeit to the people of the State the sum of fifty dollars for each such failure, to be recovered by the factory inspector in his name of office in a civil action;

but an action shall not be maintained therefor, unless the factory inspector shall have given to the employer at least ten days' written notice, that such an action will be brought if the wages due are not sooner paid as provided in this article. On the trial of such action, such corporation or association shall not be allowed to set up any defense, other than a valid assignment of such wages, a valid set-off against the same, or the absence of such employe from his regular place of labor at the time of payment, or an actual tender to such employe at the time of the payment of the wages so earned by him, or a breach of contract by such employe or a denial of the employment.

#### Assignment of future wages.

§ 12. No assignment of future wages, payable weekly, or monthly in case of a steam surface railroad corporation, shall be valid if made to the corporation or association from which such wages are to become due, or to any person on its behalf, or if made or procured to be made to any person for the purpose of relieving such corporation or association from the obligation to pay weekly, or monthly in case of a steam surface railroad corporation. Charges for groceries, provisions or clothing shall not be a valid offset for wages in behalf of any such corporation or association. No such corporation or association shall require any agreement from any employe to accept wages at other periods than as provided in this article as a condition of employment.

#### Seats for female employes in factories.

§ 17. Every person employing females in a factory shall provide and maintain suitable seats for the use of such female employes, and permit the use thereof by such employes to such an extent as may be reasonable for the preservation of their health.

Failure to provide a misdemeanor. Penal Code, § 3841, post.

#### Statistics to be furnished upon request.

§ 32. The owner, operator, manager or lessee of any mine, factory, workshop, warehouse, elevator, foundry, machine shop or other manufacturing establishment, or any agent, superintendent, subordinate, or employe thereof, shall, when requested by the commissioner of labor statistics, furnish any information in his possession or under his control which the commissioner is authorized to require, and shall admit him to any place herein named for the purpose of inspection. All statistics furnished to the commissioner of labor statistics, pursuant to this article, may be destroyed by such commissioner after the expiration of two years from the time of the receipt thereof. A person refusing to admit such commissioner, or a person authorized by him, to any such establishment,

or to furnish him any information requested, or who refuses to answer or untruthfully answers questions put to him by such commissioner, in a circular or otherwise, shall forfeit to the people of the State the sum of one hundred dollars for each refusal and answer untruthfully given, to be sued for and recovered by the commissioner in his name of office. The amount so recovered shall be paid into the State treasury.

Failure to furnish, a misdemeanor. Penal Code, § 384f, post.

#### General powers and duties of factory inspector.

§ 62. The factory inspector may divide the State into districts, assign one or more deputy inspectors to each district, and may, in his discretion, transfer them from one district to another. The factory inspector shall visit and inspect, or cause to be visited and inspected, the factories, during reasonable hours, as often as practicable, and shall cause the provisions of this chapter to be enforced therein and prosecute all persons violating the same. Any lawful municipal ordinance, by-law or regulation relating to factories or their inspection, in addition to the provisions of this chapter and not in conflict therewith, shall be observed and enforced by the factory inspector. The factory inspector, assistant and each deputy may administer oaths and take affidavits in matters relating to the enforcement of the provisions of this chapter. No person shall interfere with, obstruct or hinder, by force or otherwise, the factory inspector, assistant factory inspector or deputies while in the performance of their duties, or refuse to properly answer questions asked by such officers pertaining to the provisions of this chapter. All notices, orders and directions of assistant or deputy factory inspectors given in accordance with this chapter are subject to the approval of the factory inspector.

### ARTICLE VI.

#### Factories.

- Sec. 70. Employment of minors.
71. Certificate for employment; how issued.
  72. Contents of certificate.
  73. School attendance required.
  74. Vacation certificates.
  75. Report of certificates issued.
  76. Registry of children employed.
  77. Hours of labor of minors.
  78. Change of hours of labor of minors.
  79. Enclosure and operation of elevators and hoisting shafts; inspection.
  80. Stairs and doors.
  81. Protection of employes operating machinery.
  82. Fire-escapes.
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## Labor Law — §§ 70-77.

**Sec. 84. Walls and ceilings.**

85. Size of rooms.

86. Ventilation.

87. Accidents to be reported.

88. Wash-room and water-closets.

89. Time allowed for meals.

90. Inspection of factory buildings.

A violation of this article is made a misdemeanor. Penal Code, § 384 1, post.

**Employment of minors.**

§ 70. A child under the age of fourteen years shall not be employed in any factory in this State. A child between the ages of fourteen and sixteen years shall not be so employed, unless a certificate executed by a health officer be filed in the office of the employer.

**Certificate for employment; how issued.**

§ 71. Such certificate shall be issued by the executive officer of the board, department or commissioner of health of the city, town or village where such child resides, or is to be employed, or by such other officer thereof as may be designated, by resolution, for that purpose, upon the application of the child desiring such employment. At the time of making such application, there shall be filed with such board, department, commissioner or officer, the affidavit of the parent or guardian of such child, or the person standing in parental relation thereto, showing the date and place of birth of such child. Such certificate shall not be issued unless the officer issuing the same is satisfied that such child is fourteen years of age or upwards, and is physically able to perform the work which he intends to do. No fee shall be demanded or received for administering an oath as required by this section.

**Contents of certificate.**

§ 72. Such certificate shall state the date and place of birth of the child, if known, and describe the color of the hair and eyes, the height and weight and any distinguishing facial marks of such child, and that, in the opinion of the officer issuing such certificate, such child is upwards of fourteen years of age, and is physically able to perform the work which he intends to do.

**School attendance required.**

§ 73. No such certificate shall be granted unless it appears to the satisfaction of such board, department, commissioner or officer, that the child applying therefor has regularly attended at a school in which reading, spelling, writing, arithmetic, English grammar and geography are taught, or upon equivalent instruction by a competent teacher elsewhere than at a school, for a period equal to one school year, during the year previous to his arriving at the age of fourteen years,

or during the year previous to applying for such certificate, and is able to read and write simple sentences in the English language. The principal or chief executive officer of a school, or teacher elsewhere than at a school, shall furnish, upon demand, to a child who has attended at such school or been instructed by such teacher, or to the factory inspector, his assistant or deputies, a certificate stating the school attendance of such child.

**Vacation certificates.**

§ 74. A child of fourteen years of age, who can read and write simple sentences in the English language, may be employed in a factory during the vacation of the public schools of the city or school district where such child resides upon complying with all the provisions of the foregoing sections, except that requiring school attendance. The certificate issued to such child shall be designated a "vacation certificate," and no employer shall employ a child to whom such a certificate has been issued, to work in a factory at any time other than the time of the vacation of the public school in the city or school district where such factory is situated.

**Report of certificates issued.**

§ 75. The board or department of health or health commissioner of a city, village or town, shall transmit, between the first and tenth day of each month, to the office of the factory inspector a list of the names of the children to whom certificates have been issued.

**Registry of children employed.**

§ 76. Each person owning or operating a factory and employing children therein shall keep, or cause to be kept in the office of such factory, a register, in which shall be recorded the name, birthplace, age and place of residence of all children so employed under the age of sixteen years. Such register and the certificates filed in such office shall be produced for inspection, upon the demand of the factory inspector, his assistant or deputies.

**Hours of labor of minors.**

§ 77. A female under the age of twenty-one years or a male under the age of eighteen years shall not be employed at labor in any factory in this State before six o'clock in the morning or after nine o'clock in the evening of any day, or for more than ten hours in any one day or sixty hours in any one week, except to make a shorter workday of the last day of the week, or more hours in any one week than will make an average of ten hours per day for the whole number of days so worked. A printed notice stating the number of hours per day for each day of the week required of such persons, and

the time when such work shall begin and end, shall be kept posted in a conspicuous place in each room where they are employed. But such persons may begin their work after the time for beginning and stop before the time for ending such work, mentioned in such notice, but they shall not be required to perform any labor in such factory, except as stated therein. The terms of such notice shall not be changed after the beginning of labor on the first day of the week without the consent of the factory inspector.

#### Change of hours of labor of minors.

§ 78. When, in order to make a shorter workday on the last day of the week, a female under twenty-one, or a male under eighteen years of age, is to be required or permitted to work in a factory more than ten hours in a day, the employer of such persons shall notify the factory inspector, in writing, of such intention, stating the number of hours of labor per day, which it is proposed to require or permit, and the time when it is proposed to cease such requirement or permission; a similar notification shall be made when such requirement or permission has actually ceased. A record of the names of the employes thus required or permitted to work overtime, with the amount of such overtime and the days upon which such work was performed, shall be kept in the office of such factory, and produced upon the demand of the factory inspector.

#### Enclosure and operation of elevators and hoisting shafts; inspection.

§ 79. If, in the opinion of the factory inspector, it is necessary to protect the life or limbs of factory employes, the owner, agent, or lessee of such factory where an elevator, hoisting shafts, or well hole is used, shall cause, upon written notice from the factory inspector, the same to be properly and substantially enclosed, secured or guarded, and shall provide such proper traps or automatic doors so fastened in or at all elevator ways, except passenger elevators enclosed on all sides, as to form a substantial surface when closed and so constructed as to open and close by action of the elevator in its passage either ascending or descending. The factory inspector may inspect the cable, gearing or other apparatus of elevators in factories and require them to be kept in a safe condition. No child under the age of fifteen years shall be employed or permitted to have the care, custody or management of or to operate an elevator in a factory, nor shall any person under the age of eighteen years be employed or permitted to have the care, custody or management of or to operate an elevator therein, running at a speed of over two hundred feet a minute.

#### Stairs and doors.

§ 80. Proper and substantial hand-rails shall be provided on all stairways in factories. The steps of such stairs shall be covered with rubber, securely fastened thereon, if in the opinion of the factory inspector the safety of employes would be promoted thereby. The stairs shall be properly screened at the sides and bottom. All doors leading in or to any such factory shall be so constructed as to open outwardly where practicable, and shall not be locked, bolted or fastened during working hours.

#### Protection of employes operating machinery.

§ 81. The owner or person in charge of a factory where machinery is used, shall provide, in the discretion of the factory inspector, belt-shifters or other mechanical contrivances for the purpose of throwing on or off belts or pulleys. Whenever practicable, all machinery shall be provided with loose pulleys. All vats, pans, saws, planers, cogs, gearing, belting, shafting, set-screws and machinery, of every description, shall be properly guarded. No person shall remove or make ineffective any safeguard around or attached to machinery, vats or pans, while the same are in use, unless for the purpose of immediately making repairs thereto, and all such safeguards so removed shall be promptly replaced. Exhaust fans of sufficient power shall be provided for the purpose of carrying off dust from emery wheels, grindstones and other machinery creating dust. If a machine or any part thereof is in a dangerous condition or is not properly guarded, the use thereof may be prohibited by the factory inspector, and a notice to that effect shall be attached thereto. Such notice shall not be removed until the machine is made safe and the required safeguards are provided, and in the meantime such unsafe or dangerous machinery shall not be used. When, in the opinion of the factory inspector, it is necessary, the halls leading to workrooms shall be properly lighted. No male person under eighteen years of age or woman under twenty-one shall be permitted or directed to clean machinery while in motion.

#### Fire-escapes.

§ 82. Such fire-escapes as may be deemed necessary by the factory inspector shall be provided on the outside of every factory in this State consisting of three or more stories in height. Each escape shall connect with each floor above the first, and shall be of sufficient strength, well fastened and secured, and shall have landings or balconies not less than six feet in length and three feet in width, guarded by iron railings not less than three feet in height, embracing at least two windows at each story and connected

with the interior by easily accessible and unobstructed openings. The balconies or landings shall be connected by iron stairs, not less than eighteen inches wide, with steps of not less than six inches tread, placed at a proper slant and protected by a well-secured hand-rail on both sides, and shall have a drop ladder not less than twelve inches wide reaching from the lower platform to the ground. The windows or doors to the landing or balcony of each fire-escape shall be of sufficient size and located as far as possible, consistent with accessibility from the stairways and elevator hatchways or openings, and a ladder from such fire-escape shall extend to the roof. Stationary stairs or ladders shall be provided on the inside of every factory from the upper story to the roof, as a means of escape in case of fire.

#### **Factory inspector may order erection of fire-escapes.**

§ 83. Any other plan or style of fire-escape shall be sufficient if approved in writing by the factory inspector. If there is no fire-escape, or the fire-escape in use is not approved by the factory inspector, he may, by a written order served upon the owner, proprietor or lessee of any factory, or the agent or superintendent thereof, or either of them, require one or more fire-escapes to be provided therefor, at such locations and of such plan and style as shall be specified in such order. Within twenty days after the service of such order, the number of fire-escapes required therein shall be provided, each of which shall be of the plan and style specified in the order, or of the plan and style described in the preceding section.

#### **Walls and ceilings.**

§ 84. The walls and ceilings of each workroom in a factory shall be lime washed or painted, when in the opinion of the factory inspector, it will be conducive to the health or cleanliness of the persons working therein.

#### **Size of rooms.**

§ 85. No more employes shall be required or permitted to work in a room in a factory between the hours of six o'clock in the morning and six o'clock in the evening than will allow to each of such employes, not less than two hundred and fifty cubic feet of air space; and, unless by a written permit of the factory inspector, not less than four hundred cubic feet for each employe, so employed between the hours of six o'clock in the evening and six o'clock in the morning, provided such room is lighted by electricity at all times during such hours, while persons are employed therein.

#### **Ventilation.**

§ 86. The owner, agent or lessee of a factory shall provide, in each workroom thereof,

proper and sufficient means of ventilation; in case of failure the factory inspector shall order such ventilation to be provided. Such owner, agent or lessee shall provide such ventilation within twenty days after the service upon him of such order, and in case of failure, shall forfeit to the people of the State, ten dollars for each day after the expiration of such twenty days, to be recovered by the factory inspector, in his name of office.

#### **Accidents to be reported.**

§ 87. The person in charge of any factory, shall report in writing to the factory inspector all accidents or injuries sustained by any person therein, within forty-eight hours after the time of the accident, stating as fully as possible the extent and cause of the injury, and the place where the injured person has been sent, with such other information relative thereto as may be required by the factory inspector who may investigate the cause of such accident, and require such precautions to be taken as will, in his judgment, prevent the recurrence of similar accidents.

#### **Wash-room and water-closets.**

§ 88. Every factory shall contain a suitable, convenient and separate water-closet or water-closets for each sex, which shall be properly screened, ventilated and kept clean and free from all obscene writing or marking; and also a suitable and convenient wash-room. The water-closets used by women shall have separate approaches. If women or girls are employed, a dressing-room shall be provided for them, when required by the factory inspector.

#### **Time allowed for meals.**

§ 89. In each factory at least sixty minutes shall be allowed for the noon-day meal, unless the factory inspector shall permit a shorter time. Such permit must be in writing and conspicuously posted in the main entrance of the factory, and may be revoked at any time. Where employes are required or permitted to work overtime for more than one hour after six o'clock in the evening, they shall be allowed at least twenty minutes to obtain a lunch, before beginning to work overtime.

#### **Inspection of factory buildings.**

§ 90. The factory inspector, or other competent person designated by him, upon request, shall examine any factory outside of the cities of New York and Brooklyn, to determine whether it is in a safe condition. If it appears to him to be unsafe, he shall immediately notify the owner, agent or lessee thereof, specifying the defects, and require such repairs and improvements to be made as he may deem necessary. If the owner,



agent or lessee shall fail to comply with such requirement, he shall forfeit to the people of the State the sum of fifty dollars, to be recovered by the factory inspector in his name of office.

### ARTICLE IX.

#### Employment of Women and Children in Mercantile Establishments.

- Sec. 160. Application of article.  
 161. Hours of labor of minors.  
 162. Employment of children.  
 163. Certificate for employment; how issued.  
 164. Contents of certificate.  
 165. School attendance required.  
 166. Employment of children during vacations of public schools.  
 167. Registry of children employed.  
 168. Wash-rooms and water-closets.  
 169. Lunch-rooms.  
 170. Seats for women in mercantile establishments.  
 171. Employment of women and children in basements.  
 172. Enforcement of article.  
 173. Copy of article to be posted.

#### Application of article.

§ 160. The provisions of this article shall apply to all villages and cities which at the last preceding State enumeration had a population of three thousand or more.

A violation of this article is a misdemeanor. Penal Code, § 384 1, post.

#### Hours of labor of minors.

§ 161. No male employe, under sixteen years of age, and no female employe, under twenty-one years of age, shall be required to work in any mercantile establishment more than sixty hours in any one week, nor more than ten hours in any one day, unless for the purpose of making a shorter work-day of some one day of the week, nor shall any such employe be required or permitted to work before seven o'clock in the morning or after ten o'clock in the evening of any day. This section does not apply to the employment of such persons on Saturday, provided the total number of hours of labor in a week of any such person does not exceed sixty hours, nor to the employment of such persons between the fifteenth day of December and the following first day of January. Not less than forty-five minutes shall be allowed for the noon-day meal of the employes of any such establishment.

#### Employment of children.

§ 162. A child under the age of fourteen years shall not be employed in any mercantile establishment, except that a child upwards of twelve years of age may be employed therein during the vacation of the public schools of the city or district where

such establishment is situated. No child under the age of sixteen years shall be employed in any mercantile establishment, unless such child shall produce a certificate issued as provided in this article, to be filed in the office of such establishment.

#### Certificate for employment; how issued.

§ 163. Such certificate shall be issued by the executive officer of the board, department or commissioner of health of the city, town or village, where such child resides or is to be employed, or by such other officer thereof as may be designated, by resolution for that purpose, upon the application of the child desiring such employment. At the time of making such application there shall be filed with such board, department, commissioner or officer, the affidavit of the parent or guardian of such child or the person standing in parental relation thereto, showing the date and place of birth of such child. Such certificate shall not be issued unless the officer issuing the same, is satisfied that such child is fourteen years of age or upwards, and is physically able to perform the work, which he intends to do. No fee shall be demanded or received for administering an oath as required by this section.

#### Contents of certificate.

§ 164. Such certificate shall state the date and place of birth of the child, if known, and describe the color of the hair and eyes, the height and weight and any distinguishing facial marks of such child, and that, in the opinion of the officer issuing such certificate, such child is upwards of fourteen years of age, and is physically able to perform the work which he intends to do.

#### School attendance required.

§ 165. No such certificate shall be issued unless it appears to the satisfaction of such board, department, commissioner or officer, that the child applying therefor has regularly attended at a school in which reading, spelling, writing, arithmetic, English grammar and geography are taught, or upon equivalent instruction by a competent teacher elsewhere than at a school, for a period equal in length to one school year, during the year previous to his arriving at the age of fourteen years, or during the year previous to applying for such certificate, and is able to read and write simple sentences in the English language. The principal or other executive officer of a school at which a child has been in attendance, or the teacher who has instructed such child elsewhere than at a school, shall furnish to such child or to the board or department of health, or health officer or commissioner, upon demand, a statement of the school attendance of such child.

**Employment of children during vacations of public schools.**

§ 166. Children of the age of twelve years or more who can read and write simple sentences in the English language may be employed in mercantile establishments during the vacation of the public schools in the city or school district where such children reside, upon complying with all the provisions of this section, except that requiring school attendance. Certificates, to be designated as "vacation certificates," may be issued to such children in the same form, containing the same statements and issued by the same officers as the other certificates required by this article. Such vacation certificate shall specify the time in which the child may be employed in a mercantile establishment, which in no case shall be other than the time in which the public schools where such children reside, are closed for a vacation.

**Registry of children employed.**

§ 167. The owner, manager or agent of a mercantile establishment employing children, shall keep, or cause to be kept, in the office of such establishment, a register, in which shall be recorded the name, birthplace, age and place of residence of all children so employed under the age of sixteen years. Such register and the certificates filed in such office shall be produced for inspection, upon the demand of an officer of the board, department or commissioner of health of the town, village or city where such establishment is situated.

**Wash-rooms and water-closets.**

§ 168. Suitable and proper wash-rooms and water-closets shall be provided in, adjacent to or connected with mercantile establishments where women and children are employed. Such rooms and closets shall be so located and arranged as to be easily accessible to the employes of such establishments. Such water-closets shall be properly screened and ventilated, and, at all times, kept in a clean condition. The water-closets assigned to the female employes of such establishments shall be separate from those assigned to the male employes. If a mercantile establishment has not provided wash-rooms and water-closets, as required by this section, the board or department of health or health commissioners of the town, village or city where such establishment is situated, shall cause to be served upon the owner of the building occupied by such establishment, a written notice of the omission and directing such owner to comply with the provisions of this section respecting such wash-rooms and water-closets. Such owner shall, within fifteen days after the receipt of such notice, cause such wash-rooms and water-closets to be provided.

**Lunch-rooms.**

§ 169. If a lunch-room is provided in a mercantile establishment where females are employed, such lunch-room shall not be next to or adjoining the water-closets, unless permission is first obtained from the board or department of health or health commissioners of the town, village or city where such mercantile establishment is situated. Such permission shall be granted unless it appears that proper sanitary conditions do not exist, and it may be revoked at any time by the board or department of health or health commissioner, if it appears that such lunch-room is kept in a manner or in a part of the building injurious to the health of the employes.

**Seats for women in mercantile establishments.**

§ 170. Chairs, stools or other suitable seats shall be maintained in mercantile establishments for the use of female employes therein, to the number of at least one seat for every three females employed, and the use thereof by such employes shall be allowed at such times and to such extent as may be necessary for the preservation of their health. If the duties of the female employes, for the use of whom the seats are furnished, are to be principally performed in front of a counter, table, desk or fixture, such seats shall be placed in front thereof; if such duties are to be principally performed behind such counter, table, desk or fixture, such seats shall be placed behind the same.

**Employment of women and children in basements.**

§ 171. Women or children shall not be employed or directed to work in the basement of a mercantile establishment, unless permitted by the board or department of health, or health commissioner of the town, village or city where such mercantile establishment is situated. Such permission shall be granted unless it appears that such basement is not sufficiently lighted and ventilated, and is not in good sanitary condition.

**Enforcement of article.**

§ 172. The board or department of health or health commissioners of a town, village or city affected by this article shall enforce the same and prosecute all violations thereof. Proceedings to prosecute such violations must be begun within thirty days after the alleged offense was committed. All officers and members of such boards or department, all health commissioners, inspectors and other persons appointed or designated by such boards, departments or commissioners may visit and inspect, at reasonable hours and when practicable and necessary, all mercantile establishments within the town, village or city for which they are

appointed. No person shall interfere with or prevent any such officer from making such visitations and inspections, nor shall he be obstructed or injured by force or otherwise while in the performance of his duties. All persons connected with any such mercantile establishment shall properly answer all questions asked by such officer or inspector in reference to any of the provisions of this article.

#### Copy of article to be posted.

§ 173. A copy of this article shall be posted in three conspicuous places in each mercantile establishment affected by its provisions.

#### 6. Employes to be Allowed Time to Vote.

(Election Law, L. 1896, ch. 909.)

#### Time allowed employes to vote.

§ 109. Any person entitled to vote at a general election held within this State, shall on the day of such election, be entitled to absent himself from any service or employment in which he is then engaged or employed, for a period of two hours while the polls of such election are open. If such elector shall notify his employer before the day of such election of such intended absence, and if thereupon two successive hours for such absence shall be designated by the employer, and such absence shall be during such designated hours, or if the employer upon the day of such notice, makes no designation, and such absence shall be during any two consecutive hours while such polls are open, no deduction shall be made from the usual salary or wages of such elector, and no other penalty shall be imposed upon him by his employer by reason of such absence. This section shall be deemed to include all employes of municipalities.

#### 7. Fees of Secretary of State.

(Executive Law, L. 1892, ch. 683.)

#### Fees.

§ 26. The secretary of State shall collect the following fees:

\* \* \* \* \*

2. Searching the records in his office for any one year and for every other year in which such search is made, six cents;

3. For a copy of every paper or record not required to be certified or otherwise authenticated by him, ten cents per folio;

4. For a certified or exemplified copy of any law, record or paper, fifteen cents per folio;

5. For a certificate under the great seal of the State, one dollar.

6. For recording a certificate, notice or other paper required to be recorded, except as otherwise provided by this section, fifteen cents per folio;

7. For a certificate of the official character of a commissioner of deeds residing in another State or foreign country, twenty-five cents, and for every other certificate under the seal of his office, one dollar;

\* \* \* \* \*

12. For filing and recording the original certificate of incorporation of a railroad corporation for the construction of a railroad in a foreign country, fifty dollars; for filing the original certificates of every other railroad corporation, twenty-five dollars; for filing the original certificate of every other stock corporation, ten dollars; for filing any original certificate of incorporation drawn under article two of the membership corporations law ten dollars. (Thus amended by L. 1897, ch. 411.)

13. For filing the certificate of a foreign corporation desiring to do business in the State, ten dollars;

\* \* \* \* \*

#### 8. Fees of County Clerk.

(Code Civ. Pro.)

#### Fees of county clerks generally.

§ 3304. A county clerk is entitled, for the services specified in this section, except where another fee is allowed therefor by special statutory provision, to the following fees to be paid in advance:

\* \* \* \* \*

For a copy of an order, record, or other paper, entered or filed in his office, eight cents for each folio.

\* \* \* \* \*

For recording any instrument, which must or may legally be recorded by him, ten cents for each folio.

\* \* \* \* \*

For filing any paper required by law to be filed in his office, other than as expressly provided for in this section, six cents.

\* \* \* \* \*

For a certificate, other than that a paper, for the copying of which he is entitled to a fee, is a copy, twenty-five cents.

#### 9. Act to Prevent Monopolies.

(L. 1897, ch. 383.)

Section 1. Every contract, agreement, arrangement or combination whereby a monopoly in the manufacture, production or sale in this State of any article or commodity of common use is or may be created, established or maintained, or whereby competition in this State in the supply or price of any such article or commodity is or may be restrained or prevented, or whereby for the purpose of creating, establishing or maintaining a monopoly within this State of the manufacture, production or sale of any such article or commodity, the free pursuit of this State of any lawful business, trade or oc-



cupation is or may be restricted or prevented, is hereby declared to be against public policy, illegal and void.

§ 2. Every person or corporation, or any officer or agent thereof, who shall make or attempt to make or enter into any such contract, agreement, arrangement or combination, or who within this State shall do any act pursuant thereto, or in, toward or for the consummation thereof, wherever the same may have been made, is guilty of a misdemeanor, and on conviction thereof shall, if a natural person, be punished by a fine not exceeding five thousand dollars, or by imprisonment for not longer than one year, or by both such fine and imprisonment; and if a corporation, by a fine of not exceeding five thousand dollars.

§ 3. The attorney-general may bring an action in the name and behalf of the people of the State against any person, trustee, director, manager, or other officer or agent of a corporation, or against a corporation, foreign or domestic, to restrain and prevent the doing in this State of any act herein declared to be illegal, or any act in, toward or for the making or consummation of any contract, agreement, arrangement or combination herein prohibited, wherever the same may have been made.

§ 4. The provisions of article one of title three of chapter nine of the code of civil procedure relating to the application for an order for the examination of witnesses before the commencement of an action and the conduct of such examination shall apply, so far as practicable, to an action or proceeding by the attorney-general instituted pursuant to this chapter; and for the purpose of determining whether an action or a proceeding should be commenced hereunder, the attorney-general may examine and procure the testimony of witnesses in the manner herein prescribed.

§ 5. Whenever the attorney-general deems it necessary or proper to procure testimony before beginning any action or proceeding under this chapter, he may present to any justice of the supreme court, an application in writing for an order directing such persons as the attorney-general may require to appear before a justice of the supreme court, or a referee designated in such order, and answer such relevant and material questions as may be put to them, concerning any alleged illegal contract, arrangement, agreement or combination, in violation of this chapter, if it appears to the satisfaction of the justice of the supreme court to whom the application for the order is made that such an order is necessary, then such order shall be granted. Such order shall be granted without notice, unless notice is required to be given by the justice of the supreme court to whom the application is made, in which event an order to show cause

why such application should not be granted shall be made containing such preliminary injunction or stay as may appear to said justice to be proper or expedient, and shall specify the time when and place where the witnesses are required to appear and such examination shall be held either in the city of Albany or in the judicial district in which the witness resides or in which the principal office within this State of the corporation affected is located. The justice or referee may adjourn such examination from time to time and witnesses must attend accordingly.

§ 6. The order for such examination must be signed by the justice making it and the service of a copy thereof, with an endorsement by the attorney-general signed by him, to the effect that the person named therein is required to appear and be examined at the time and place, and before the justice or referee specified in such endorsement, shall be sufficient notice for the attendance of witnesses. Such endorsement may contain a clause requiring such person to produce on such examination all books, papers and documents in his possession, or under his control, relating to the subject of such examination. The order shall be served upon the person named in the endorsement aforesaid, by showing him the original order, and delivering to and leaving with him, at the same time, a copy thereof endorsed as above provided, and by paying or tendering to him the fee allowed by law to witnesses subpoenaed to attend trials of civil actions in a court of record in this State.

§ 7. The testimony of each witness must be subscribed by him, and all testimony taken by such justice or referee appointed must be certified and delivered to the attorney-general at the close of the examination. The testimony given by a witness in a proceeding or examination under this act shall not be given in evidence against him in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of the testimony so given by him, nor shall any person be excused from answering any questions that may be put to him on the ground that it may tend to convict him of a violation of the provisions of this act.

§ 8. A referee appointed as provided in this act possesses all the powers and is subject to all the duties of a referee appointed under section ten hundred and eighteen of the code of civil procedure, so far as practicable, and may punish for contempt a witness duly served as prescribed in this act for non-attendance or refusal to be sworn or to testify, or to produce books, papers and documents according to the direction of the endorsement aforesaid, in the same manner, and to the same extent as a referee appointed to hear, try and determine an issue of fact or of law.

§ 9. Chapter seven hundred and sixteen of the laws of eighteen hundred and ninety-

three and chapter two hundred and sixty-seven of the laws of eighteen hundred and ninety-six, are hereby repealed.

§ 10. This act shall take effect immediately.

#### 10. Federal Anti-Trust Law.

(L. 1890, ch. 647.)

Section 1. Every contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

§ 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

§ 3. Every contract, combination, in form of trust or otherwise or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments in the discretion of the court.

§ 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the sev-

eral district attorneys of the United States, in their respective districts, under the direction of the attorney-general, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

§ 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

§ 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

§ 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

§ 8. That the word "person" or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country. (Approved July 2, 1890.)

## PART VI.

## PROVISIONS OF THE PENAL CODE.

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594. Misconduct of directors of stock corporations.

610. Misconduct of officers and directors of stock corporations.

611. Misconduct of officers and employes of corporations.

613. Misconduct of corporate elections.

614. Presumption of knowledge of corporate condition and business and of assent thereto by directors; definition.

**Punishments, how determined.**

§ 13. Whenever in this Code, the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case must be determined by the court authorized to pass sentence, within such limits as may be prescribed by this Code. In all cases where a corporation is convicted of an offense for the commission of which a natural person would be punishable with imprisonment, as for a felony, such corporation is punishable by a fine of not more than five thousand dollars.

**Punishments of felonies when not fixed by statute.**

§ 14. A person convicted of a crime declared to be a felony, for which no other punishment is specially prescribed by this code, or by any other statutory provision

in force at the time of the conviction and sentence, is punishable by imprisonment for not more than seven years, or by a fine of not more than one thousand dollars, or by both.

"Person" includes corporation. Stat. Const. L., § 5.

**Punishment of misdemeanors when not fixed by statute.**

§ 15. A person convicted of a crime declared to be a misdemeanor, for which no other punishment is specially prescribed by this code, or by any other statutory provision in force at the time of the conviction and sentence, is punishable by imprisonment in a penitentiary or county jail, for not more than one year, or by a fine of not more than five hundred dollars, or by both.

"Person" includes corporation. Stat. Const. L., § 5.

**Refusal to permit employes to attend election.**

§ 41-f. A person or corporation who refuses to an employe entitled to vote at an election or town meeting, the privilege of attending thereat, as provided by the election law, or subjects such employe to a penalty or reduction of wages because of the exercise of such privilege, is guilty of a misdemeanor.

**Coercion by employers.**

§ 171 "A." Any person or persons, employer or employers of labor, and any person or persons of any corporation or corporations, on behalf of such corporation or corporations, who shall hereafter coerce or compel any person or persons, employe or employes, laborer or mechanic, to enter into an agreement, either written or verbal from such person, persons, employe, laborer or mechanic, not to join or become a member of any labor organization, as a condition of such person or persons securing employment, or continuing in the employment of any such person or persons, employer or employers, corporation or corporations, shall be deemed guilty of a misdemeanor. The penalty for such misdemeanor shall be imprisonment in a penal institution for not more than six months, or by a fine of not more than two hundred dollars, or by both such fine and imprisonment.



**Carrying on or conducting business as agent.**

§ 363a. 1. Any person now carrying on or conducting a general mercantile or manufacturing business within this State, or hereafter commencing such business at or in a fixed location, as agent or manager for another or others, shall, within thirty days after the passage of this act, or the commencement of such business, file a sworn statement, verified by such agent and principal or principals, in the county clerk's office of the county within which said business is carried on, stating the nature of the business and the full name and residence of such principal or principals.

2. Any person or persons, principal or principals, may be relieved from all liability for the future act of such agent or manager by filing in the office of the county clerk where the original statement appointing such agent or manager is filed, a statement revoking such agent or managership, to take effect ten days after the filing thereof: Provided he shall, at or before the date of such filing serve either personally or by mail, in the manner prescribed by the code of civil procedure for service of papers in civil actions, a copy of such revocation statement on each person or firm with whom such principal shall have transacted any business through such agent or manager within six months previous to such filing. But failure to make service of such statement shall not invalidate such revocation except as to persons not so served, said statement to be acknowledged before an officer authorized to take acknowledgments of deeds and to be published in at least three consecutive issues of the newspaper published in the county and nearest to the place where the business of said agent or manager is carried on; but if no newspaper is published in said county, then said statement shall be published in the newspaper published nearest to the place where such business shall be carried on.

3. The county clerk shall keep a register of the names of such agents in alphabetical order, and of their principals, for which registering and filing he shall receive a fee of one dollar; and copies of such certificate and registry certified by him and the affidavit of such publication, shall be evidence.

4. Any person or persons failing to make and file the statement required by the first paragraph of this act, as therein required, shall be guilty of a misdemeanor.

**Failure to furnish statistics to commissioner of labor statistics.**

§ 384-f Any person who refuses, when requested by the commissioner of labor statistics,

1. To admit him or a person authorized by him to a mine, factory, workshop, warehouse, elevator, foundry, machine shop or other manufacturing establishment; or,

2. To furnish him with information relative to his duties which may be in such person's possession or under his control; or,

3. To answer questions put by such commissioner in a circular or otherwise, or shall knowingly answer such questions untruthfully, is guilty of a misdemeanor, and on conviction therefor shall be punished by a fine of not less than fifty nor more than two hundred dollars.

**Hours of labor to be required.**

§ 384-h. Any person or corporation.

1. Who, contracting with the State or a municipal corporation, shall require more than eight hours work for a day's labor; or,

2. Who shall require more than ten hours labor, including one half-hour for dinner, to be performed within twelve consecutive hours, by the employes of a street surface and elevated railway owned or operated by corporations whose main line of travel or routes lie principally within the corporate limits of cities of more than one hundred thousand inhabitants; or,

3. Who shall require the employes of a corporation owning or operating a brickyard to work more than ten hours in any one day or to commence work before seven o'clock in the morning, unless by agreement between employer and employe; or,

4. Who shall require the employes of a corporation operating a line of railroad of thirty miles in length or over, in whole or in part within this State to work contrary to the requirements of article one of the labor law, is guilty of a misdemeanor, and on conviction therefor shall be punished by a fine of not less than five hundred nor more than one thousand dollars for each offense. If any contractor with the State or a municipal corporation shall require more than eight hours for a day's labor, upon conviction thereof in addition to such fine, the contract shall be forfeited at the option of the municipal corporation.

**Payment of wages.**

§ 384-i. A corporation or joint-stock association or a person carrying on the business thereof, by lease or otherwise, who does not pay the wages of its employes in cash, weekly or monthly as provided in article one of the labor law, is guilty of a misdemeanor, and upon conviction therefor, shall be fined not less than twenty-five nor more than fifty dollars for each offense.

**Failure to furnish seats for female employes.**

§ 384-j. Any person employing females in a factory or mercantile establishment who does not provide and maintain suitable seats for the use of such employes and permit the use thereof by such employes to such

an extent as may be reasonable for the preservation of their health, is guilty of a misdemeanor.

#### Violations of provisions of labor law.

§ 384-1. Any person who violates or does not comply with:

1. The provisions of article six of the labor law, relating to factories and the employment of children therein;

2. The provisions of article seven of the labor law, relating to the manufacture of articles in tenements;

3. The provisions of article eight of the labor law, relating to bakeries and confectionary establishments, the employment of labor and the manufacture of flour or meal food products therein;

4. The provisions of article eleven of the labor law, relating to mercantile establishments, and the employment of women and children therein is guilty of a misdemeanor, and upon conviction shall be punished for a first offense by a fine of not less than twenty nor more than one hundred dollars; for a second offense by a fine of not less than fifty nor more than two hundred dollars, or by imprisonment for not more than thirty days, or by both such fine and imprisonment; for a third offense by a fine of not less than two hundred and fifty dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

#### Officer of corporation selling, etc., shares.

§ 518. An officer, agent or other person employed by any company or corporation existing under the laws of this State, or of any other State or territory of the United States, or of any foreign government, who willfully and with a design to defraud, sells, pledges or issues, or causes to be sold, pledged or issued, or signs or procures to be signed with intent to sell, pledge or issue, or to be sold, pledged or issued, a false, forged or fraudulent paper, writing or instrument, being or purporting to be a scrip, certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such company or corporation, or a bond or other evidence of debt of such company or corporation, or a certificate or other evidence of the ownership or of the transfer of any such bond or other evidence of debt, is guilty of forgery in the third degree, and upon conviction, in addition to the punishment prescribed in this title for that offense, may also be sentenced to pay a fine not exceeding three thousand dollars.

#### Falsely indicating person as corporate officer.

§ 519. The false making or forging of any instrument or writing purporting to have been issued by or in behalf of a corporation or association, State or government, and

bearing the pretended signature of any person, therein falsely indicated as an agent or officer of such corporation, is forgery in the same degree, as if that person were in truth such officer or agent of the corporation or association, State or government.

#### Frauds in the organization of corporations.

§ 590. A person who:

1. Without authority subscribes the name of another to or inserts the name of another in any prospectus, circular or other advertisement or announcement of any corporation or joint-stock association existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association; or,

2. Signs the name of fictitious person to any subscription for an agreement to take stock in any corporation, existing or proposed; or,

3. Signs to any such subscription or agreement the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced.

Is guilty of a misdemeanor.

#### Fraudulent issue of stock, scrip, etc.

§ 591. An officer, agent or other person in the service of any joint-stock company, or corporation formed or existing under the laws of this State, or of the United States, or of any State or territory thereof, or of any foreign government or country, who willfully and knowingly, with intent to defraud, either,

1. Sells, pledges or issues, or causes to be sold, pledged or issued, or signs or executes, or causes to be signed or executed, with intent to sell, pledges or issues, or causes to be sold, pledged or issued, any certificate or instrument purporting to be a certificate or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt, or writing purporting to be a bond or evidence of debt of such company or corporation, without being first thereto duly authorized by such company or corporation, or contrary to the charter or laws under which such corporation or company exists, or in excess of the power of such company or corporation, or of the limit imposed by law or otherwise upon its power to create or issue stock or evidence of debt; or,

2. Reissues, sells, pledges or disposes of, or causes to be reissued, sold, pledged or disposed of, any surrendered or canceled certificates, or other evidence of the transfer or ownership of any such share or shares.

Is punishable by imprisonment for a term not exceeding seven years, or by a fine not exceeding three thousand dollars, or by both.

**Frauds in procuring organization of corporation or increase of capital.**

§ 592. An officer, agent or clerk of a corporation, or of persons, proposing to organize a corporation, or to increase the capital stock of a corporation, who knowingly exhibits a false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in a State prison not exceeding ten years.

**Misconduct of directors of stock corporations.**

§ 594. A director of a stock corporation, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended,

1. To make a dividend, except from the surplus profits arising from the business of the corporation, and in the cases and manner allowed by law; or,

2. To divide, withdraw, or in any manner pay to the stockholders, or any of them, any part of the capital stock of the corporation; or to reduce such capital stock without the consent of the legislature, or,

3. To discount or receive any note or other evidence of debt in payment of an installment of capital stock actually called in and required to be paid, or with intent to provide the means of making such payment; or,

4. To receive or discount any note or other evidence of debt with intent to enable any stockholder to withdraw any part of the money paid in by him on his stock; or,

5. To apply any portion of the funds of such corporation, except surplus profits, directly or indirectly, to the purchase of shares of its own stock; or,

6. To receive any such shares in payment or satisfaction of a debt due to such corporation; or,

7. To receive in exchange for the shares, notes, bonds or other evidences of debt of such corporation, shares of the capital stock, notes, bonds or other evidences of debt issued by any other stock corporation engaged in another line of business unless authorized by law to make such exchange.

Is guilty of a misdemeanor.

**Misconduct of officers and directors of stock corporations.**

§ 610. An officer or director of a stock corporation who:

1. Issues, participates in issuing, or concurs in a vote to issue any increase of its

capital stock beyond the amount of the capital stock thereof, duly authorized by or in pursuance of law; or,

2. Sells, agrees to sell, or is directly or indirectly interested in the sale of any share of stock of such corporation, or in any agreement to sell the same, unless at the time of such sale or agreement he is an actual owner of such share;

Is guilty of a misdemeanor, punishable by imprisonment for not less than six months, or by a fine not exceeding five thousand dollars, or by both.

**Misconduct of officers and employees of corporations.**

§ 611. A director, officer, agent or employee of any corporation or joint-stock association who:

1. Knowingly receives or possesses himself of any of its property otherwise than in payment for a just demand, and with intent to defraud, omits to make or to cause or direct to be made a full and true entry thereof in its books and accounts; or,

2. Concurs in omitting to make any material entry thereof; or,

3. Knowingly concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false; or,

4. Having the custody or control of its books, willfully refuses or neglects to make any proper entry in the stock book of such corporation as required by law, or to exhibit or allow the same to be inspected and extracts to be taken therefrom by any person entitled by law to inspect the same or to take extracts therefrom; or,

5. If a notice of an application for an injunction affecting the property or business of such joint-stock association or corporation is served upon him, omits to disclose the fact of such service and the time and place of such application to the other directors, officers and managers thereof; or,

6. Refuses or neglects to make any report or statement lawfully required by a public officer;

Is guilty of a misdemeanor.

**Misconduct of corporate elections.**

§ 613. Any person who:

1. Votes or issues a proxy to vote at any meeting of the stockholders or bondholders, or both, of a stock corporation, upon any stock or bond, if the person in whose behalf such vote is given shall not then have the title to the stock represented by such certificate or to such bond, and shall not have it in his possession or control, notwithstanding such stock or bond shall then stand on the books of such corporation in the name of the person in whose behalf such vote is given; or,

2. Being entitled to vote at such meeting, sells his vote or issues a proxy to vote to any



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person for any sum of money or thing of value; or,

3. Acts as an inspector of election at any such meeting and violates an oath taken by him, in pursuance of law as such inspector, or violates the provisions of an oath required by law to be taken by him as such inspector, or is guilty of any dishonest or corrupt conduct as such inspector;

Is guilty of a misdemeanor.

**Presumption of knowledge of corporate condition and business and of assent thereto by directors; definition.**

§ 614. It is no defense to a prosecution for a violation of a provision of this chapter, that the corporation is a foreign corporation if it carries on business or keeps an office therefor in this State.

The term "director" as used in this chapter includes any of the persons having, by law, the direction or management of the af-

fairs of a corporation, by whatever name described.

A director of a corporation or joint-stock association is deemed to have such a knowledge of the affairs of the corporation or association as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this chapter. If present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this chapter occurs, he must be deemed to have concurred therein, unless he at the time causes or in writing requires his dissent therefrom to be entered on the minutes of the directors. If absent from such meeting, he must be deemed to have concurred in any such violation, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the corporation for six months thereafter without causing or in writing requiring his dissent from such violation to be entered on such record or minutes.

## PART VII.

## PROVISIONS OF THE CODE OF CRIMINAL PROCEDURE.

## Sec. 675. Summons.

676. Form of summons.

677. When and how served.

678. Examination of the charge.

679. Certificate of the magistrate, and return thereof with the depositions.

680. Grand jury may proceed as in the case of a natural person.

681. Bringing an indicted corporation into court.

682. Fine, on conviction, how collected.

## Summons.

§ 675. Upon an information against a corporation, the magistrate must issue a summons, signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge; the time to be not less than ten days after the issuing of the summons.

## Form of summons.

§ 676. The summons must be in substantially the following form:

"County of Albany. (or as the case may be)  
"In the name of the People of the State of New York:

"To the (naming corporation):

You are hereby summoned to appear before me, at (naming the place,) on (specifying the day and hour), to answer a charge made against you, upon the information of A. B., for (designating the offense, generally.)

"Dated at the city, or 'town,' of . . . , the . . . day of . . . , 18. . .

G. H.,

Justice of the peace."

(Or as the case may be.)

## When and how served.

§ 677. The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president, or other head of the corporation, or to the secretary, cashier, or managing agent thereof.

## Examination of the charge.

§ 678. At the time appointed in the summons, the magistrate must proceed to investigate the charge, in the same manner as in the case of a natural person brought before him, so far as those proceedings are applicable.

Certificate of the magistrate, and return thereof with the depositions.

§ 679. After hearing the proofs, the magistrate must certify upon the depositions, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the depositions and certificate, in the manner prescribed in section two hundred and twenty-one.

Grand jury may proceed as in the case of a natural person.

§ 680. If the magistrate return a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed thereon, as in the case of a natural person held to answer.

Bringing an indicted corporation into court.

§ 681. When an indictment is filed against any corporation, such corporation must be arraigned thereon, and the court acquires jurisdiction over the corporation, in the manner following:

1. The clerk of the court wherein such indictment is found, or to which it is sent or removed, or the district attorney of the county, must issue a summons signed by him with his name of office, requiring such corporation to appear and answer the indictment by a demurrer or written plea to be verified in like manner as a pleading in a civil action, at a time and place to be specified in such summons, such time to be not less than five days after the issue thereof. The summons may be substantially in the following form:

Supreme Court, County of . . . . . (state the proper county or court as the case may be.)

The People of the State of New York

v.

The A. B. Company.

You are hereby summoned to appear in this court and, by demurrer or plea in writing duly verified, answer an indictment filed against you by the grand jury of this county, on the . . day of . . . , charging you with the crime of (designating the offense generally), at a term of the supreme court (or as the case may be) of this county, at (naming the place) on (stating the day and hour) and in case of

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your failure to so appear and answer, judgment will be pronounced against you.

Dated at the city (or town) of .....,  
the .... day of ....., 18...

C. D.

District Attorney.

(or by order of the court, E. F., Clerk, as the  
case may be.)

2. The summons must be served at least four days before the appearance fixed therein, in the same manner as is provided for the service of a summons upon a corporation in a civil action; and if the corporation does not appear in the manner and at the time and place specified in the summons, judgment must be pronounced against it.

3. Nothing contained in this section shall be construed as preventing the appearance of a corporation by counsel to answer an indictment, without the issuance or service of the summons as above provided. And when

an indictment shall have been filed against a corporation it may voluntarily appear and answer the same by counsel duly authorized to so appear for it; in which case the court acquires full jurisdiction over the corporation in the same manner as if the summons had been issued and served.

**Fine on conviction, how collected.**

§ 682. When a fine is imposed upon a corporation upon conviction, it may be collected in the same manner as a judgment in a civil action, and if an execution issued upon such judgment be returned unsatisfied, the district attorney of the county may thereupon bring an action in the name of the People of the State of New York, to procure a judgment sequestering the property of the corporation, as provided by the Code of Civil Procedure.



## PART VIII.

## PROVISIONS OF THE CODE OF CIVIL PROCEDURE.

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3343. Definition of domestic and foreign corporation.

Domestic corporation, when deemed resident.

§ 341. For the purpose of determining the jurisdiction of a county court, in either of the cases specified in the last section a domestic corporation or joint-stock association, whose principal place of business is established, by or pursuant to a statute, or by its articles of association, or is actually located within the county, is deemed a resident of the county, and personal service of a summons made within the county, as prescribed in this act, or personal service of a mandate, whereby a special proceeding is commenced, made within the county, as prescribed in this act for personal service of a summons, is sufficient service thereof upon a domestic corporation, wherever it is located.

Limitation of action to redeem from mortgage.

§ 379. An action to redeem real property from a mortgage, with or without an account of rents and profits, may be maintained by the mortgagor, or those claiming under him, against the mortgagee in possession, or those claiming under him, unless he or they have continuously maintained an adverse possession of the mortgaged premises, for twenty years after the breach of a condition of the mortgage, or the non-fulfillment of a covenant therein contained.

Other periods of limitation.

§ 380. The following actions must be commenced within the following periods, after the cause of action has accrued.

Within twenty years.

§ 381. (Amended by ch. 416 of 1877.)

Within twenty years:

An action upon a sealed instrument.

But where the action is brought for breach of a covenant of seizin, or against incumbances, the cause of action is for the purposes of this section only, deemed to have accrued upon an eviction, and not before.

## Code of Civil Procedure — §§ 382-386, 399.

**Within six years.**

§ 382. (Amended by ch. 416 of 1877, and by ch. 422 of 1877.) Within six years:

1. An action upon a contract obligation or liability, express or implied; except a judgment or sealed instrument.

2. An action to recover upon a liability, created by statute; except a penalty or forfeiture.

3. An action to recover damages for an injury to property, or a personal injury; except in a case where a different period is expressly prescribed in this chapter.

4. An action to recover a chattel.

5. An action to procure a judgment, other than for a sum of money, on the ground of fraud, in a case which, on the thirty-first day of December, eighteen hundred and forty-six, was cognizable by the court of chancery. The cause of action, in such a case, is not deemed to have accrued, until the discovery, by the plaintiff, or the person under whom he claims, of the facts constituting the fraud.

6. An action to establish a will. Where the will has been lost, concealed, or destroyed, the cause of action is not deemed to have accrued, until the discovery, by the plaintiff, or the person under whom he claims, of the facts upon which its validity depends.

7. An action upon a judgment or decree, rendered in a court not of record, except where a transcript shall be filed, pursuant to section thirty hundred and seventeen of this act, and also, except a decree heretofore rendered in a surrogate's court of the State. The cause of action, in such a case, is deemed to have accrued when final judgment was rendered. (Amended by ch. 307 of 1894.) Took effect April 17, 1894.)

**Within three years.**

§ 383. (Amended by ch. 416 of 1877.) Within three years:

1. An action against a sheriff, coroner, constable or other officer, for the non-payment of money collected upon an execution.

2. An action against a constable, upon any other liability incurred by him, by doing an act in his official capacity, or by the omission of an official duty; except an escape.

3. An action upon a statute, for a penalty or forfeiture, where the action is given to the person aggrieved, or to that person and the people of the State; except where the statute imposing it prescribes a different limitation.

4. An action against an executor, administrator, or receiver, or against the trustee of an insolvent debtor, appointed, as prescribed by law, in a special proceeding instituted in a court or before a judge, brought to recover a chattel, or damages for taking, detaining, or injuring personal property by the defendant, or the person whom he represents.

5. An action to recover damages for a personal injury, resulting from negligence.

**Within two years.**

§ 384. Within two years:

1. An action to recover damages for libel, slander, assault, battery, seduction, criminal conversation, false imprisonment or malicious prosecution.

2. An action upon a statute, for a forfeiture or penalty to the people of the State. (Amended by ch. 335 of 1896. In effect April 20, 1896.)

**Within one year.**

§ 385. Within one year:

1. An action against a sheriff or coroner, upon a liability incurred by him, by doing an act in his official capacity, or by omission of an official duty, except the non-payment of money collected upon an execution.

2. An action against any other officer, for the escape of a prisoner, arrested or imprisoned by virtue of a civil mandate.

**When cause of action accrues on a current account.**

§ 386. In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item, proved in the account on either side.

**Attempt to commence action in a court of record.**

§ 399. An attempt to commence an action, in a court of record, is equivalent to the commencement thereof against each defendant, within the meaning of each provision of this act, which limits the time for commencing an action, when the summons is delivered, with the intent that it shall be actually served, to the sheriff, or, where the sheriff is a party, to a coroner of the county, in which that defendant or one of two or more codefendants, who are joint contractors, or otherwise united in interest with him, resides or last resided; or, if the defendant is a corporation, to a like officer of the county, in which it is established by law, or wherein its general business is or was last transacted, or wherein it keeps or last kept an office for the transaction of business. But in order to entitle a plaintiff to the benefit of this section, the delivery of the summons to an officer must be followed, within sixty days after the expiration of the time limited for the actual commencement of the action, by personal service thereof upon the defendant sought to be charged, or by the first publication of the summons, as against that defendant, pursuant to an order for service upon him in that manner.

*Id.*; in a court not of record.

§ 400. The last section, excluding the provision requiring a publication or service of the summons within sixty days, applies to an attempt to commence an action in a court not of record, where the summons is delivered to an officer authorized to serve the same, within the city or town wherein the person resides, or the corporation is located, as specified in that section; provided that actual service thereof is made with due diligence.

**How personal service of summons made upon a domestic corporation.**

§ 431. Personal service of the summons upon a defendant, being a domestic corporation, must be made by delivering a copy thereof, within the State as follows:

1. If the action is against the mayor, alderman,\* and commonalty of the city of New York, to the mayor, comptroller, or counsel to the corporation.

2. If the action is against any other city, to the mayor, treasurer, counsel, attorney or clerk; or, if the city lacks either of those officers, to the officer performing corresponding functions, under another name.

3. In any other case, to the president or other head of the corporation, the secretary or clerk to the corporation, the cashier, the treasurer, or a director or managing agent.

The general superintendent of the work of operating the lines of a telephone and telegraph company was held to be the managing agent in the American Telephone and Telegraph Co. *Barrett v. American Telephone & Telegraph Co.*, 133 N. Y. 491; 34 N. E. Rep. 289. A division superintendent whose orders govern all the servants and agents of the company was held to be a managing agent within the meaning of this section in *Rochester, etc., R. R. Co. v. N. Y., L. E. & W. R. R. Co.*, 72 Hun, 602. Service upon the vice-president was held sufficient in *Balmford v. Grand Lodge A. O. U. W.*, 16 Misc. Rep. 4. Service upon the president de facto gives jurisdiction. *Stillman v. Associated Lace Makers Co.*, 14 Misc. Rep. 503. A telegraph operator is not a managing agent. *Jepson v. P. C. T. Co.*, 20 N. Y. Supp. 300; nor is a baggage master. *Flynn v. Hudson R. R. Co.*, 6 How. Pr. 308; nor an employee who merely attends to the publication of a periodical issued by the corporation. *Ruland v. Canfield Publishing Co.*, 10 N. Y. Supp. 913; nor a person employed to superintend any uncompleted portion of the track of a railroad, having no authority to make contracts generally and no control of the affairs of the company or of its books. *Emerson v. Auburn & O. L. R. R. Co.*, 13 Hun, 150. Service upon a person known to have been the president of a corporation but who had previously resigned his office and at the time of service had no connection with the company, is

not sufficient service upon the company. *Buchanan v. Prospect Park Hotel Co.*, 14 Misc. Rep. 435.

*Id.*; upon a foreign corporation.

§ 432. (Amended by ch. 416 of 1877.) Personal service of a summons, upon a defendant, being a foreign corporation, must be made by delivering a copy thereof, within the State, as follows:

1. To the president, treasurer, or secretary; or, if the corporation lacks either of those officers, to the officer performing corresponding functions, under another name.

2. To a person designated for the purpose by a writing, under the seal of the corporation, and the signature of its president, vice-president, or other acting head, accompanied with the written consent of the person designated, and filed in the office of the secretary of State. The designation must specify a place, within the State, as the office or residence of the person designated; and, if it is within a city, the street and the street number, if any, or other suitable designation of the particular locality. It remains in force, until the filing in the same office of a written revocation thereof, or of the consent, executed in like manner; but the person designated may, from time to time, change the place specified as his office or residence to some other place within the State, by a writing, executed by him, and filed in like manner. The secretary of State may require the execution of any instrument, specified in this section, to be authenticated as he deems proper, and he may refuse to file it without such an authentication. An exemplified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.

3. If such a designation is not in force, or if neither the person designated, nor an officer specified in subdivision first of this section, can be found with due diligence, and the corporation has property within the State, or the cause of action arose therein; to the cashier, a director, or a managing agent of the corporation, within the State.

Service under subdivision 1 of this section may be made on the president of a foreign corporation, although it has no property here and the president is merely passing through the State with his family. *Pope v. Terre Haute C. & M. Co.*, 87 N. Y. 137; *Porter v. Sewall Car Heat Co.*, 23 Abb. N. C. 233; 7 N. Y. Supp. 166. Service on the secretary of a foreign corporation within the State is sufficient, although the corporation has no property here and the cause of action did not arise here. *Miller v. Jones*, 67 Hun, 281. A person who accepts whatever cash a foreign corporation received within this State, is its cashier within the meaning of subdivision 3 of this section. *McCullough v. Paillard Non-*

\* So in the original.



Magnetic Watch Co., 27 Civ. Pro. Rep. 386. As to what constitutes a managing agent upon whom service can be made under subdivision 3, see *Brewster v. Mich. Central R. R. Co.*, 5 How. 183; *Palmer v. Chicago Even. Post Co.*, 85 Hun, 403; 66 N. Y. St. Rep. 476; *Color v. Pittsburgh Bridge Co.*, 84 Hun, 285; *Redington v. Mariposa S. & M. Co.*, 19 id. 405. Service cannot be made under this section on a person employed merely to sell tickets for a foreign railroad corporation. *Doty v. Mich. Central R. R. Co.*, 8 Abb. 427; nor on an assistant secretary whose duty merely consists in making such records as he is directed to make. *Sterett v. Denver & R. G. R. Co.*, 17 Hun, 316; nor on a person employed to take charge of a branch office, but having nothing to do with the general business of the company. *Redington v. Mariposa S. & M. Co.*, 19 Hun, 405; nor on a president who has resigned at the time service is made. *Ervin v. Oregon S. M. Co.*, 22 Hun, 598.

**Service of process, etc., to commence a special proceeding.**

§ 433. The provisions of this article, relating to the mode of service of a summons, apply likewise to the service of any process or other paper whereby a special proceeding is commenced in a court, or before an officer, except a proceeding to punish for contempt, and except where special provision for the service thereof is otherwise made by law.

**Proof of service of summons, how made.**

§ 434. Proof of service, as prescribed in this article, must be made by affidavit, except as follows:

1. If the service was made by the sheriff, it may be proved by his certificate thereof.

2. If the defendant served is an adult, who has not been judicially declared to be incompetent to manage his affairs, the service may be proved by a written admission, signed by him, and either acknowledged by him, and certified in like manner as a deed to be recorded in the county, or accompanied with the affidavit of a person, other than the plaintiff, showing that the signature is genuine.

A certificate, admission, or affidavit of service of a summons, must state the time and place of service. A written admission of the service of a summons, or a paper accompanying the same imports, unless otherwise expressly stated therein, or otherwise plainly to be inferred from its contents, that a copy of the paper was delivered to the person signing the admission.

A sheriff's certificate is defective when it omits to mention the cause in which it is served. *Litchfield v. Burwell*, 5 How. 241; but a slight mistake in the name of a defendant who is described in the certificate as a defendant, does not impair the validity of such certificate. *Miller v. Brenham*, 68 N. Y. 83. It is immaterial that

admission acknowledges service of a copy of the summons instead of the summons itself. *Maples v. Mackey*, 15 Hun, 533.

**Cases in which service of summons by publication may be ordered.**

§ 438. (Amended by ch. 542 of 1879.) An order, directing the service of a summons upon a defendant, without the State, or by publication, may be made in either of the following cases:

1. Where the defendant to be served is a foreign corporation; \* \* \*

6. Where the defendant is a resident of the State, or a domestic corporation; and an attempt was made to commence the action against the defendant, as required in chapter fourth of this act, before the expiration of the limitation applicable thereto, as fixed in that chapter; and the limitation would have expired within sixty days next preceding the application, if the time had not been extended by the attempt to commence the action.

7. Where the action is against the stockholders of a corporation, or joint-stock company, and is authorized by a law of the State, and the defendant is a stockholder thereof.  
\* \* \* \* \*

A national bank located in another State is a foreign corporation. *Cook v. State National Bank*, 52 N. Y. 96. To authorize the granting of an order for service by publication, the complaint must state facts constituting a cause of action against the defendant of which the court has jurisdiction. *Paget v. Stevens*, 143 N. Y. 172; 38 N. E. Rep. 273; 62 N. Y. St. Rep. 193.

**Papers upon which order for publication may be made.**

§ 439. (Amended by ch. 416 of 1877 and by ch. 542 of 1879.) The order must be founded upon a verified complaint, showing a sufficient cause of action against the defendant to be served, and proof by affidavit of the additional facts required by the last section; and also, where the application is made upon the ground that the defendant is a foreign corporation, or not a resident of the State, or in a case specified in subdivision fourth, fifth or seventh of the last section, that the plaintiff has been or will be unable, with due diligence, to make personal service of the summons.

**Verification of pleading by corporation, how and by whom made.**

§ 525. (Amended by ch. 542 of 1879.) The verification must be made by the affidavit of the party, or, if there are two or more parties united in interest, and pleading together, by at least one of them, who is acquainted with the facts, except as follows:

1. Where the party is a domestic corporation, the verification must be made by an officer thereof. \* \* \*

3. Where the party is a foreign corporation, or where the party is not within the county where the attorney resides, or, if the latter is not a resident of the State, the county where he has his office, and capable of making the affidavit; or, if there are two or more parties united in interest, and pleading together, where neither of them, acquainted with the facts, is within that county, and capable of making the affidavit; or where the action or defense is founded upon a written instrument for the payment of money only, which is in the possession of the agent or the attorney; or where all the material allegations of the pleading are within the personal knowledge of the agent or the attorney; in either case the verification may be made by the agent of or the attorney for the party.

A director of a domestic corporation may verify its answer. *Bigelow v. Whitehall Mfg. Co.*, 1 City Ct. Rep. 138. One who is the duly authorized agent of the company to acquire real estate, is an officer of the company within the meaning of this section. In *re St. Lawrence & Adirondack R. R. Co.*, 133 N. Y. 270; 31 N. E. Rep. 218; 45 N. Y. St. Rep. 207.

#### Form of affidavit of verification.

§ 526. The affidavit of verification must be to the effect, that the pleading is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. Where it is made by a person, other than the party, he must set forth, in the affidavit, the grounds of his belief, as to all matters not stated upon his knowledge, and the reason why it is not made by the party.

A verification by an officer of a corporation need not set forth the grounds of his belief as to matters not stated upon his knowledge. The form of verification is the same as that of a party to the action. *American Insurance Co. v. Bankers & M. Telegraph Co.*, 13 Daly, 200; *Glaubensklee v. Hamburg & American Packet Co.*, 9 Abb. 104.

#### Injunction, when right thereto depends upon the nature of the action.

§ 603. Where it appears, from the complaint, that the plaintiff demands, and is entitled to a judgment against the defendant, restraining the commission or continuance of an act, the commission or continuance of which, during the pendency of the action, would produce injury to the plaintiff, an injunction order may be granted to restrain it. The case, provided for in this section, is described in this act, as a case where the right to an injunction depends upon the nature of the action.

#### Id.; when right thereto depends upon extrinsic facts.

§ 604. (Amended by ch. 416 of 1877.) In either of the following cases, an injunction order may also be granted in an action:

1. Where it appears, by affidavit, that the defendant, during the pendency of the action, is doing, or procuring, or suffering to be done, or threatens, or is about to do, or to procure, or suffer to be done, an act, in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual, an injunction order may be granted to restrain him therefrom.

2. Where it appears, by affidavit, that the defendant, during the pendency of the action, threatens, or is about to remove, or to dispose of his property, with intent to defraud the plaintiff, an injunction order may be granted, to restrain the removal or disposition.

#### Warrant of attachment, in what actions granted.

§ 635. A warrant of attachment against the property of one or more defendants in an action, may be granted upon the application of the plaintiff, as specified in the next section, where the action is to recover a sum of money only, as damages for one or more of the following causes:

1. Breach of contract, express or implied, other than a contract to marry.

2. Wrongful conversion of personal property.

3. An injury to person or property in consequence of negligence, fraud or other wrongful act. (Amended by ch. 946 of 1895. To take effect January 1, 1896.)

#### What must be shown to procure warrant.

§ 636. To entitle the plaintiff to such a warrant he must show, by affidavit, to the satisfaction of the judge granting the same, as follows:

1. That one of the causes of action specified in the last section exists against the defendant. If the action is to recover damages for breach of a contract, the affidavit must show that the plaintiff is entitled to recover a sum stated therein, over and above all counterclaims known to him.

2. That the defendant is either a foreign corporation or not a resident of this State; or, if he is a natural person and a resident of the State, that he has departed therefrom, with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with the like intent; or, if the defendant is a natural person, or a domestic corporation, that he or it has removed, or is about to remove, property from the State, with intent to defraud his or its creditors; or has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete property, with the like intent;

or, where, for the purpose of procuring credit, or the extension of credit, the defendant has made a false statement in writing, under his own hand or signature, or under the hand or signature of a duly authorized agent, made with his knowledge and acquiescence as to his financial responsibility or standing; or, where the defendant being an adult and a resident of the State, has been continuously without the United States for more than six months next before the granting of the order of publication of the summons against him, and has not made a designation of a person upon whom to serve a summons in his own behalf, as prescribed in section four hundred and thirty of this act; or a designation so made no longer remains in force; or service upon the person so designated cannot be made within the State, after diligent effort. (Amended by ch. 578 of 1895. In effect September 1, 1895.)

A warrant of attachment procured by a foreign corporation may be vacated if it does not appear in the papers that the corporation has complied with section 15 of the General Corporation Law requiring it to obtain a certificate of authority from the secretary of State that it has complied with all the requirements of law authorizing it to do business in this State. *Sawyer Lumber Co. v. Russell*, 84 Hun, 114.

#### **Sheriff must attach property of defendant.**

§ 644. (Amended by ch. 416 of 1877.) The sheriff must immediately execute the warrant, by levying upon so much of the personal and real property of the defendant, within his county, not exempt from levy and sale by virtue of an execution, as will satisfy the plaintiff's demand, with the costs and expenses. He must take into his custody all books of account, vouchers, and other papers, relating to the personal property attached, and all evidences of the defendant's title to the real property attached, which he must safely keep, to be disposed of, as prescribed in this title. The sheriff, to whom a warrant of attachment is delivered, may levy, from time to time, and as often as is necessary, until the amount, for which it was issued, has been secured, or final judgment has been rendered in the action, notwithstanding the expiration of his term of office.

#### **What interest in real property may be attached.**

§ 645. The real property, which may be levied upon by virtue of a warrant of attachment, includes any interest in real property, either vested or not vested, which is capable of being alienated by the defendant.

#### **Attachment of unpaid subscription to foreign corporation.**

§ 646. Under a warrant of attachment against a foreign corporation, other than a

corporation created by or under the laws of the United States, the sheriff may levy upon the sum remaining unpaid upon a subscription to the capital stock of the corporation, made by a person within the county; or upon one or more shares of stock therein, held by such a person, or transferred by him, for the purpose of avoiding payment thereof.

#### **Id.; interest in corporation.**

§ 647. The rights or shares which the defendant has in the stock of an association or corporation, together with the interest and profits thereon, may be levied upon; and the sheriff's certificate of the sale thereof entitles the purchaser to the same rights and privileges, with respect thereto, which the defendant had, when they were so attached.

#### **Id.; bond, note, etc.**

§ 648. (Amended by ch. 416 of 1876.) The attachment may also be levied upon a cause of action arising upon contract; including a bond, promissory note, or other instrument for the payment of money only, negotiable, or otherwise, whether past due, or yet to become due, executed by a foreign or domestic government, State, county, public officer, association, municipal or other corporation, or by a private person, either within or without the State; which belongs to the defendant, and is found within the county. The levy of the attachment thereupon is deemed a levy upon, and a seizure and attachment of, the debts represented thereby.

#### **How property attached.**

§ 649. A levy under a warrant of attachment must be made as follows:

1. Upon real property, by filing with the clerk of the county where it is situated, a notice of the attachment, stating the names of the parties to the action, the amount of the plaintiff's claim, as stated in the warrant, and a description of the particular property levied upon. The notice must be subscribed by the plaintiff's attorney, adding the office address; and must be recorded and indexed by the clerk, in the same book, in like manner, and with like effect, as a notice of the pendency of an action.

2. Upon the personal property capable of manual delivery, including a bond, a promissory note, or other instrument for the payment of money, by taking the same into the sheriff's actual custody. He must thereupon, without delay, deliver to the person from whose possession the property is taken, if any, a copy of the warrant, and of the affidavits upon which it was granted.

3. Upon other personal property, by leaving a certified copy of the warrant, and a notice showing the property attached, with the person holding the same; or, if it consists



of a demand, other than as specified in the last subdivision, with the person against whom it exists; or, if it consists of right or share in the stock of an association or corporation, or interest or profits thereon, with the president, or other head of the association or corporation, or the secretary, cashier, or managing agent thereof.

4. Upon property discovered in any action brought as prescribed in subdivision two of section six hundred and fifty-five of this act, by entering in the proper clerk's office, the judgment rendered in said action, and thereafter levying on said property in the manner prescribed in subdivisions one, two and three of this section. (Amended by chs. 542 of 1879 and 504 of 1889.)

#### **Certificate of defendant's interest to be furnished.**

§ 650. Upon the application of a sheriff, holding a warrant of attachment, the president or other head of an association or corporation, or the secretary, cashier, or managing agent thereof, or a debtor of the defendant, or a person holding property, including a bond, promissory note, or other instrument, for the payment of money, belonging to the defendant, must furnish to the sheriff a certificate, under his hand, specifying the rights or number of shares of the defendant, in the stock of the association or corporation, with all dividends declared, or incumbrances thereon; or the amount, nature, and description of the property held for the benefit of the defendant, or of the defendant's interest in property so held, or of the debt or demand owing to the defendant as the case requires.

#### **Person refusing certificate may be examined.**

§ 651. If a person, to whom application is made, as prescribed in the last section, refuses to give such a certificate; or if it is made to appear, by affidavit, to the satisfaction of the court, or a judge thereof, or the county judge of the county to which the warrant is issued, that there is reason to suspect that a certificate given by him is untrue, or that it fails fully to set forth the facts required to be shown thereby; the court or judge may make an order directing him to attend, at a specified time, and at a place within the county to which the warrant is issued, and submit to an examination under oath, concerning the same. The order may, in the discretion of the court or judge, direct an appearance before a referee named therein.

#### **Only attached property bound when summons not personally served.**

§ 707. (Amended by ch. 416 of 1877.) Where a defendant who has not appeared is a non-resident of the State, or a foreign

corporation, and the summons was served without the State, or by publication, pursuant to an order obtained for that purpose, as prescribed in chapter fifth of this act, the judgment can be enforced only against the property which has been levied upon, by virtue of the warrant of attachment, at the time when the judgment is entered. But this section does not declare the effect of such a judgment, with respect to the application of any statute of limitation.

#### **Admission by member of corporation.**

§ 839. The admission of a member of an aggregate corporation, who is not a party, shall not be received as evidence against the corporation, unless it was made concerning and while engaged in a transaction in which he was the authorized agent of the corporation.

#### **Book of foreign corporation, when evidence.**

§ 929. Where a party wishes to prove an act or transaction of a foreign corporation; the book or books of the corporation may be used for that purpose, as presumptive evidence, whether any or all of the parties are or are not members of the corporation.

#### **When copy thereof is evidence.**

§ 930. If an original book is not produced at the trial, as prescribed in the last section, a copy thereof, or of an entry therein, verified as prescribed in the next section, may be used, with like effect as the original book; provided that the party, intending to use the copy, gives the adverse party at least ten days' notice of his intention, specifying briefly the nature of the evidence proposed to be given. But this and the next section do not apply, where the foreign corporation is a party to the action, and seeks to prove its own act or transaction, in its own behalf.

#### **How copy thereof to be verified.**

§ 931. The copy must be verified by the deposition, taken as prescribed by law, or the oral testimony, taken at the trial, of the person who made it, or of a person who has examined and compared it with the original book, or the entry therein. The witness must testify that the copy produced is correct; that he made it, or compared it with the original; and that he then knew that the original book so copied, or containing the entry, was the book of the corporation; or that it was then acknowledged to him to be such, by an officer or receiver of the corporation, or a person having the custody thereof, naming the person who made the acknowledgment; and he must specify where, and in whose custody, the original was then kept.

**General civil jurisdiction of justice of the peace.**

§ 2862. Except as otherwise prescribed in the next section, a justice of the peace has jurisdiction of the following civil actions:

1. An action to recover damages upon or for breach of a contract, express or implied, other than a promise to marry, where the sum claimed does not exceed two hundred dollars.

2. An action to recover damages for a personal injury, or an injury to property, where the sum claimed does not exceed two hundred dollars.

3. An action for a fine or penalty, not exceeding two hundred dollars.

4. An action upon a bond conditioned for the payment of money, where the sum claimed to be due does not exceed two hundred dollars; the judgment to be rendered for the sum actually due. Where the sum secured by the bond is to be paid in instalments, an action may be brought for each instalment, as it becomes due.

5. An action upon a surety bond, taken, by any justice of the peace.

6. An action upon a judgment rendered in a court of a justice of the peace, or in a district court of the city of New York, or in a justices' court of a city, being a court not of record.

7. An action to recover one or more chattels, with or without damages for the taking, withholding, or detention thereof, where the value of the chattel, or of all the chattels, as stated in the affidavit made on the part of the plaintiff, does not exceed two hundred dollars.

8. An action to recover damages for an escape from the jail liberties, as provided by chapter 2, title 2, articles 4 and 5 of this act, where the sum claimed does not exceed fifty dollars. (Added by ch. 303 of 1896. In effect September 1, 1896.)

**No jurisdiction in certain cases.**

§ 2863. But a justice of the peace cannot take cognizance of a civil action, in either of the following cases:

1. Where the people of the State are a party, except for one or more fines or penalties not exceeding two hundred dollars.

2. Where the title to real property comes in question, as prescribed in title third of this chapter.

3. Where the action is to recover damages for an assault, battery, false imprisonment, libel, slander, criminal conversation, seduction, or malicious prosecution, or where it is brought under sections 1837, 1843, 1868, 1902 or 1969 of this act.

4. Where, in a matter of account, the sum total of the accounts of both parties, proved to the satisfaction of the justice, exceeds four hundred dollars.

5. Where the action is brought against an executor or administrator as such, except

where the amount of the claim is less than the sum of fifty dollars, and the claim has been duly presented to the executor or administrator and rejected by him. (Amended by ch. 527 of 1895. In effect September 1, 1895.)

**Action may be brought by or against a corporation.**

§ 2865. An action, cognizable by a justice of the peace, may be brought by or against a corporation; by or against a natural person in his own right; by or against a town or county officer in his official character; or by an executor, or administrator, trustee of an express trust or a receiver in supplementary proceedings. (Amended by ch. 399 of 1882. See section 2.)

**In what town action must be brought.**

§ 2869. An action must be brought before a justice of a town or city wherein one of the parties resides, or a justice of an adjoining town or city in the same county, except in one of the following cases:

1. Where the defendant has absconded from his residence, it may be brought before a justice of the town or city in which the defendant, or a portion of his property, is at the time of the commencement of the action.

2. Where the plaintiff is not a resident of the county, or if there are two or more plaintiffs, when all are non-residents thereof, it must be brought in the town where the defendant resides, or in any adjoining town thereto. (Amended by ch. 153 of 1895. In effect September 1, 1895.)

3. Where the defendant is a non-resident of the county, it may be brought before a justice of the town or city, in which he is at the time of the commencement of the action.

4. Where it is specially prescribed by law, that a particular action may be brought before a justice of the town, city, county, or district, where an offense was committed, or where property is found. A defendant designated in section 2879, section 2880, or section 2881 of this act, is deemed, for the purposes of this section, a resident of the town or city where the person, to whom a copy of the summons is delivered, resides.

5. In any town adjoining an incorporated city, no justice of such town shall have jurisdiction of any action brought against a resident of such adjoining city unless the plaintiff in an action is a resident of such town.

**Service of summons on a corporation.**

§ 2879. Where the defendant to be served is a corporation, the summons may be personally served upon it by delivering a copy thereof to an officer or person, to whom a copy of the summons in an action, brought

against the corporation in the supreme court, might be delivered, as prescribed in sections 431 and 432 of this act; or, to any director or trustee of the corporation, by whatever official title he is called.

**When defendant in a court of record may require security for costs.**

§ 3268. The defendant, in an action brought in a court of record, may require security for costs to be given, as prescribed in this title, where the plaintiff was, when the action was commenced, either \* \* \*

2. A foreign corporation \* \* \*

**Definition of domestic and foreign corporation.**

§ 3343. In construing this act, the following rules must be observed, except where a contrary intent is expressly declared in the provision to be construed, or plainly apparent from the context thereof:

\* \* \* \* \*  
18. A "domestic corporation" is a corporation created by or under the laws of the State; or located in the State, and created by or under the laws of the United States, or by or pursuant to the laws, in force in the colony of New York, before the 19th day of April, in the year 1775. Every other corporation is a "foreign corporation."



## PART IX.

## ACTIONS AND PROCEEDINGS RELATING TO CORPORATIONS.

- I. Proceedings to change name.
- II. Action by attorney-general against persons assuming corporate franchises.
- III. Action by a corporation, and action against a corporation, to recover damages or property.
- IV. Judicial supervision of a corporation and of the officers and members thereof.
- V. Actions to sequester the property of a corporation, and actions to procure the dissolution thereof.
- VI. Action by the people to annul a corporation.
- VII. Provisions applicable to two or more of the actions specified.
- VIII. Proceedings for the voluntary dissolution of a corporation.

## I. Proceedings to Change Name.

(Code Civ. Pro., ch. 17, tit. 10.)

- Sec. 2411. Petition by corporation.
- 2412. Contents of petition.
- 2413. Notice of presentation of petition.
- 2414. Order.
- 2415. When change to take effect.
- 2416. Substitution of new name in pending action or proceeding.
- 2417. Reports by clerks to State officers.

## Petition by corporation.

§ 2411. A petition to assume another corporate name may be made by a domestic corporation, whether incorporated by a general or special law, to the supreme court at a special term thereof, held in the judicial district in which its principal business office shall be situated, or, if it be other than a stock corporation, at a special term held in the judicial district in which its certificate of incorporation is filed or recorded, or in which its principal property is situated, or in which its principal operations are or theretofore have been conducted. If it be a banking, insurance or railroad corporation, the petition must be authorized by a resolution of the directors of the corporation, and approved if a banking corporation, by the superintendent of banks; if an insurance corporation, by the superintendent of insurance, and if a railroad corporation, by the board of railroad commissioners. The petition to change the name of any other corporation must have annexed thereto a certificate of the secretary of State, that the name which such corporation proposes to assume is not the name of any other domestic corporation

or a name which he deems so nearly resembling it, as to be calculated to deceive. (Amended by ch. 366 of 1893.)

## Contents of petition.

§ 2412. The petition must be in writing, signed by the petitioner and verified in like manner as a pleading in a court of record, and must specify the grounds of the application, the name, age and residence of the individual whose name is proposed to be changed, and the name which he proposes to assume, and if the petitioner be a corporation, its present name, and the name it proposes to assume, which must not be the name of any other corporation, or a name so nearly resembling it as to be calculated to deceive; and if it be a railroad corporation, a corporation having banking powers or the power to make loans upon pledges or deposits, or to make insurances, that the petition has been duly authorized by a resolution of the directors of the corporation and approved by the proper officer. (Amended by ch. 366 of 1893.)

## Notice of presentation of petition.

§ 2413. If the petition be to change the name of an infant, and is made by the infant's next friend, notice of the time and place at which the petition will be presented must be served upon the father, or if he is dead or cannot be found, upon the mother, or if both are dead or cannot be found, upon the general guardian or guardian of the person of the infant, in like manner as a notice of a motion upon an attorney in an action, unless it appears to the satisfaction of the court that the infant has no father or mother, or that both reside without the State or cannot be found, and that he has no guardian residing within this State, in which case the court may dispense with notice or require notice to be given to such persons and in such manner as the court thinks proper. If the petition be made by a corporation located elsewhere than in the city and county of New York, notice of the presentation thereof shall be published once in each week for six successive weeks in the State paper (at Albany, in which notices by State officers are authorized by law to be published), and in a newspaper of every county in which such corporation shall have a business office, or if it has no business office, of the county in which its principal corporate property is situated, or in which its operations are or

theretofore have been principally conducted, which newspaper, if it be a banking corporation, shall be designated by the superintendent of banks, if an insurance corporation, by the superintendent of insurance, or if a railroad corporation, by the railroad commissioners. In the city and county of New York such notice shall be published once in each week for six successive weeks in two daily newspapers published in such county. (Amended by ch. 264 of 1894. Took effect April 4, 1894.)

#### Order.

§ 2414. If the court to which the petition is presented is satisfied thereby, or by the affidavit and certificate presented therewith, that the petition is true, and that there is no reasonable objection to the change of name proposed, and if the petition be to change the name of an infant, that the interests of the infant will be substantially promoted by the change, and, if the petitioner be a corporation, that the petition has been duly authorized and that notice of the presentation of the petition, if required by law, has been made, the court shall make an order authorizing the petitioner to assume the name proposed on a day specified therein, not less than thirty days after the entry of the order. The order shall be directed to be entered and the papers on which it was granted, to be filed within ten days thereafter in the clerk's office of the county in which the petitioner resides, if he be an individual, or in the office of the clerk of the city court of New York if the order be made by that court, or, if the petitioner be a corporation, in the office of the clerk of the county in which its certificate of incorporation, if any, shall be filed, or if there be none filed in which its principal office shall be located, or if it has no business office, in the county in which its principal property is situated, or in which its operations are or theretofore have been principally conducted, or in the office of the clerk of the county in which the special term granting the order is held; and, if the petitioner be a corporation, that a certified copy of such order shall, within ten days after the entry thereof, be filed in the office of the secretary of State; and also, if it be a banking corporation, in the office of the superintendent of banks, or if it be an insurance corporation, in the office of the superintendent of insurance, or if it be a railroad corporation, in the office of the board of railroad commissioners. Such order shall also direct the publication, within ten days after the entry thereof of a copy thereof in a designated newspaper, in the county in which the order is directed to be entered, at least once if the petitioner be an individual, or if the petitioner be a corporation, once in each week for four successive weeks. The county clerk, in whose office an order changing the name of a corporation is entered, shall record the

same at length in the book kept in his office for recording certificates of incorporation. (Amended by ch. 946 of 1895. In effect January 1, 1896.)

#### When change to take effect.

§ 2415. If the order shall be fully complied with, and within forty days after the making of the order, an affidavit of the publication thereof shall be filed and recorded in the office in which the order is entered, and in each office in which certified copies thereof are required to be filed, if any, the petitioner shall, on and after the day specified for that purpose, in the order to be known by the name which is thereby authorized to be assumed, and by no other name. No proceedings heretofore had under sections two thousand four hundred and fourteen and two thousand four hundred and fifteen of the Code of Civil Procedure for the change of the name of a corporation, shall be invalid by reason of the non-filing of an affidavit of the publication of the order changing such name within twenty days from the date thereof. (Amended by ch. 264 of 1894. Took effect April 4, 1894.)

#### Substitution of new name in pending action or proceeding.

§ 2416. An action or special proceeding, civil or criminal, commenced by or against a person whose name is so changed shall not abate, nor shall any relief, recovery or other proceeding therein be prevented, impeded or impaired in consequence of such change of name. The plaintiff in an action or the party instituting the special proceeding, or the people, as the case requires, may, at any time, obtain an order amending any of the papers or proceedings therein, by the substitution of the new name, without costs and without prejudice to the action or proceeding. (Amended by ch. 366 of 1893.)

#### Reports by clerks to state officers.

§ 2417. The clerk of each county and of each court, shall annually, in the month of December, report to the secretary of State all changes of names of individuals or of corporations, which have been made in pursuance of orders filed in their respective offices during the past year and since the last previous report, and also report in like manner to the superintendent of banks all changes of the names of banking corporations, and to the superintendent of insurance all changes of names of corporations authorized to make insurances. The secretary of State must cause to be published, in the next volume of the session laws a tabular statement showing the original name of each person and corporation and the name which he or it has been authorized to assume. (Amended by ch. 366 of 1893.)

## Actions — Code, §§ 1948, 1775, 1776.

**II. Action by Attorney-General against Persons Assuming Corporate Franchises.**

(Code Civ. Pro., § 1948.)

**Attorney-general may maintain action.**

§ 1948. The attorney-general may maintain an action, upon his own information, or upon the complaint of a private person, in either of the following cases:

1. Against a person who usurps, intrudes into, or unlawfully holds or exercises, within the State, a franchise, or a public office, civil or military, or an office in a domestic corporation.

2. Against a public officer, civil or military, who has done or suffered an act which by law works a forfeiture of his office.

3. Against one or more persons who act as a corporation, within the State, without being duly incorporated; or exercise, within the State, any corporate rights, privileges, or franchises, not granted to them by the law of the State.

4. Against a foreign corporation which exercises within the State any corporate rights, privileges or franchises, not granted to it by the law of this State; or which within the State has violated any provision of law, or, contrary to law, has done or omitted any act, or has exercised a privilege or franchise, not conferred upon it by the law of this State, where, in a similar case, a domestic corporation would, in accordance with section 1798 of this act, be liable to an action to vacate its charter and to annul its existence; or which exercises within the State any corporate rights, privileges or franchises in a manner contrary to the public policy of the State. (New. Added by ch. 962 of 1896. In effect May 28, 1896.)

See § 1798 for cases in which a domestic corporation may be dissolved. General Corporation Law, § 15, provides that a foreign corporation shall not do business in the State without obtaining a certificate of the secretary of State "that the business of the corporation to be carried on in this State is such as may be lawfully carried on by a corporation incorporated under the laws of this State for such or similar business, or, if more than one kind of business, by two or more corporations so incorporated for such kind of business respectively."

No leave of court is necessary to enable the attorney-general to bring an action against persons assuming to act as a corporation, without being duly incorporated. *People v. Boston, Hoosac Tunnel & W. Ry. Co.*, 27 Hun, 528 (1882). This section contemplates an action against individuals, and not against corporations. *People v. Equity Gas Light Co.*, 141 N. Y. 232; 36 N. E. Rep. 194. Accordingly held in the above case that it was not proper to bring an action under this section to abate an alleged nuisance maintained by a corporation. After the corporate existence of a corporation has expired, an action may be brought against individuals for a perpetual injunction

restraining them from transacting the business of a corporation, but the corporation is not a proper party. *People ex rel. Haberman v. James*, 5 App. Div. 412.

Where the charter of a corporation prescribed that its powers should cease if it did not organize and commence business within three years, an action may be brought under this section restraining certain persons from exercising corporate rights thereunder where the corporation did not commence business until ten years after its incorporation. *People v. Equity G. W. C. Co.*, 3 Misc. Rep. 333.

**III. Action by a Corporation, and Action against a Corporation, to Recover Damages or Property.**

(Code Civ. Pro., ch. 15, tit. 2, art. 1.)

Sec. 1775. Complaint in actions by or against corporations.

1776. When proof of corporate existence unnecessary.

1777. Misnomer; when waived.

1778. Action against a corporation upon a note, etc.

1779. When foreign corporation may sue.

1780. When foreign corporation may be sued.

**Complaint in actions by or against corporations.**

§ 1775. In an action brought by or against a corporation, the complaint must aver that the plaintiff, or the defendant, as the case may be, is a corporation; must state whether it is a domestic corporation or a foreign corporation; and, if the latter, the State, county, or government, by or under whose laws it was created. But the plaintiff need not set forth, or specially refer to, any act or proceeding, by or under which the corporation was created.

Definition of foreign and domestic corporations, as used in Code Civ. Pro., § 3343, ante, "Provisions of the Code of Civil Procedure," as used generally in statutes. Gen. Corp. L., § 3, ante.

A defect in a complaint in an action against a corporation in failing to state whether it is a domestic or foreign corporation, and if the latter, the sovereignty under whose law it was incorporated is not a ground of demurrer, but the remedy is by motion. *Harmon v. Vanderbilt Hotel Co.*, 79 Hun, 392; *Rothchilds v. G. T. R. R. Co.*, 38 N. Y. St. Rep. 869. The requirement that the complaint shall state whether the corporation is a domestic or foreign one, may in certain cases be satisfied by an allegation of facts from which the conclusion is inevitable. *Farmers' & M. National Bank v. Rogers*, 17 N. Y. St. Rep. 381; *Columbia Bank v. Jackson*, 24 id. 738; *American Baptist Home Mis. Soc. v. Foote*, 52 Hun, 307.

**When proof of corporate existence unnecessary.**

§ 1776. In an action brought by or against a corporation, the plaintiff need not prove,



upon the trial, the existence of the corporation, unless the answer is verified, and contains an affirmative allegation that the plaintiff, or the defendant, as the case may be, is not a corporation.

A defendant cannot show under a general denial that the plaintiff was not incorporated. *Schuldt v. Nelke Art Lithographic Co.*, 17 Misc. Rep. 124; nor on a denial on information and belief that plaintiff is a corporation. *Vulcan v. Myers*, 58 Hun, 162; 34 N. Y. St. Rep. 122; *Lansom Consolidated Store Co. v. Conyngham*, 11 Misc. Rep. 428; 65 N. Y. St. Rep. 271; nor upon an allegation that defendant has no knowledge or information sufficient to form a belief as to the allegations of the complaint, but there must be an affirmative allegation that plaintiff is not a corporation. *Snow, Church & Co. v. Hall*, 19 Misc. Rep. 655; *M. M. Co. v. Trowbridge*, 68 Hun, 28; *Martin Cantine Co. v. Warshaner*, 7 Misc. Rep. 412; *Bengston v. Thingvala S. Co.*, 31 Hun, 96; *Matter of Petition N. Y., L. & W. R. R. Co.*, 99 N. Y. 12; 1 N. E. Rep. 27; *Concordia S. & A. Association v. Reed*, 93 N. Y. 474. Where an action is brought against a corporation and the answer does not deny that the defendant is a corporation, the plaintiff need not prove the incorporation. *Goldsmith v. Wells Co.*, 86 Hun, 489.

One who has become a stockholder, acted for several years as a trustee, takes part in its management and contracted with it as a corporation, cannot dispute the validity of the incorporation. *Phoenix Warehousing Co. v. Badger*, 67 N. Y. 294 (1876).

A person who has served as director of a corporation is estopped from denying its existence in an action against him for a subscription. *Rugles v. Brock*, 6 Hun, 164 (1875).

Persons claiming to be members of a corporation are estopped from denying the fact that it is incorporated. *People ex rel. Sturges v. Keese*, 27 Hun, 43 (1882).

While a member of a de facto corporation contracts with it in a corporate capacity, neither can dispute its corporate character. *Whitford v. Laidler*, 94 N. Y. 145 (1883); *rev'g* 25 Hun, 136.

A person contracting with a corporation where there is proof of the user of corporate powers of such corporation on previous occasions is estopped from disputing its incorporation. *Commercial Bank of Keokuk, Iowa, v. Pfeiffer*, 108 N. Y. 242; 15 N. E. Rep. 311 (1888).

#### Misnomer, when waived.

§ 1777. In an action or special proceeding, brought by or against a corporation, the defendant is deemed to have waived any mistake in the statement of the corporate name, unless the misnomer is pleaded in the answer, or other pleading in the defendant's behalf.

#### Action against a corporation upon a note, etc.

§ 1778. In an action against a foreign or domestic corporation, to recover damages

for the non-payment of a promissory note, or other evidence of debt, for the absolute payment of money, upon demand, or at a particular time, an order extending the time to answer or demur, shall not be granted, except by the court, upon notice to the plaintiff's attorney. In such an action, unless the defendant serves, with a copy of his answer or demurrer, a copy of an order of a judge, directing that the issues presented by the pleadings be tried, the plaintiff may take judgment, as in case of default in pleading, at the expiration of twenty days after service of a copy of the complaint, either personally with the summons, or upon the defendant's attorney, pursuant to his demand therefor; or, if the service of the summons was otherwise than personal, at the expiration of twenty days after the service is complete.

Definition of foreign and domestic corporation as used in Code Civ. Pro., § 3343, ante, "Provisions of the Code of Civil Procedure," as used generally. Gen. Corp. L., § 3, ante.

This section does not apply to an action to charge a corporation as indorser of a promissory note. *Shorer v. Times P. & P. Co.*, 119 N. Y. 483; 23 N. E. Rep. 979. But it does apply to an action against a corporation upon its protested notes brought by an indorser who was compelled to take them up. *Ford v. Binghamton H. P. Co.*, 54 Hun, 451; *aff'd*, 121 N. Y. 664; 24 N. E. Rep. 1093. It seems that the refusal for an order for the trial of issues is reviewable on appeal. *Moran v. Long Island City*, 101 N. Y. 439; 5 N. E. Rep. 80. An action on a life insurance policy is not within the meaning of this section. *N. Y. Life Insurance Co. v. Universal Life Insurance Co.*, 88 N. Y. 424. Where a corporation defendant in an action upon a promissory note, fails to serve with its answer a copy of an order directing that issues be tried, the plaintiff may take judgment by default without returning the answer with a notice calling attention to the failure to serve such copy of order. *Watertown Bk. v. Westchester Co. Water-Works*, 19 Misc. Rep. 685 (1897).

A corporation that has paid a note is estopped from denying the authority of the person who made it in its behalf. *Davies v. N. Y. Concert Co.*, 36 N. Y. St. Rep. 816 (1891); *aff'd*, without opinion, 128 N. Y. 635.

#### When foreign corporation may sue.

§ 1779. An action may be maintained by a foreign corporation, in like manner, and subject to the same regulations, as where the action is brought by a domestic corporation, except as otherwise specially prescribed by law. But a foreign corporation cannot maintain an action, founded upon an act, or upon a liability or obligation, express or implied, arising out of, or made and entered into in consideration of, an act, which the laws of the State forbid a corporation or association of individuals to do, without

## Actions — Code, §§ 1780, 1781.

express authority of law. This section does not affect the validity of a meeting of the stockholders or directors of a foreign corporation, held within the State, where such a meeting is authorized by the laws of the State, country, or government by or under which the corporation is created; or of an act, done at such a meeting, which is not in conflict with the same laws or the laws of the State.

Powers within State of foreign corporations. Gen. Corp. L., § 15. See note to last section.

The right of a foreign corporation to sue in this State is not dependent upon section 15 of the General Corporation Law, but is conferred by this section. Section 15 of the General Corporation Law only prohibits actions upon contracts made by corporations in this State after its passage until they shall have obtained the necessary certificate; actions upon contracts made by other parties and assigned to the corporation are not within the statute. *O'Reilly, Skelly & Fogarty Co. v. Green*, 18 Misc. Rep. 423.

#### When foreign corporation may be sued.

§ 1780. An action against a foreign corporation may be maintained by a resident of the State, or by a domestic corporation, for any cause of action. An action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only:

1. Where the action is brought to recover damages for the breach of a contract, made within the State, or relating to property situated within the State, at the time of the making thereof.

2. Where it is brought to recover real property situated within the State, or a chattel, which is replevied within the State.

3. Where the cause of action arose within the State, except where the object of the action is to affect the title to real property situated without the State.

See note to § 1778 for definition of foreign corporation.

Where the cause of action arose without the State, the courts of this State have no jurisdiction and the defendant's appearance in such case voluntarily does not confer jurisdiction. *Galt v. Providence Savings Bank*, 18 Abb. N. C. 431; *Robinson v. Oceanic S. M. Co.*, 112 N. Y. 315; 19 N. E. Rep. 625; *Seiser Bros. Co. v. Potter Providence Co.*, 62 N. Y. St. Rep. 69.

An action by the foreign receiver of a foreign corporation to secure possession of books, papers and property of the corporation, withheld from the plaintiff's possession, and to procure the appointment of a receiver here, for the purpose of receiving, holding and preserving the same, is not maintainable under subdivision 3. *Mabon v. Ongley Electric Co.*, 156 N. Y. 196; rev'g 24 App. Div. 41.

An action may be brought in this State by a stockholder of a foreign corporation for the appointment of a receiver of its property in this State on the ground of its insolvency. *Woerishoffer v. North River Construction Co.*, 6 Civ. Pro. Rep. 113 (1884).

#### IV. Judicial Supervision of a Corporation, and of the Officers and Members thereof.

(Code Civ. Pro., ch. 15, tit. 2, art. 2.)

Sec. 1781. Action against directors, etc., of a corporation for misconduct.

1782. By whom action to be brought.

1783. This article, how construed.

#### Action against directors, etc., of a corporation for misconduct.

§ 1781. An action may be maintained against one or more trustees, directors, managers, or other officers of a corporation, to procure a judgment for the following purposes, or so much thereof as the case requires:

1. Compelling the defendants to account for their official conduct, in the management and disposition of the funds and property, committed to their charge.

2. Compelling them to pay to the corporation, which they represent, or to its creditors, any money, and the value of any property, which they have acquired to themselves, or transferred to others, or lost, or wasted, by a violation of their duties.

3. Suspending a defendant from exercising his office, where it appears that he has abused his trust.

4. Removing a defendant from his office, upon proof or conviction of misconduct, and directing a new election to be held by the body or board, duly authorized to hold the same, in order to supply the vacancy created by the removal; or, where there is no such body or board, or where all the members thereof are removed, directing the removal to be reported to the governor, who may, with the advice and consent of the senate, fill the vacancies.

5. Setting aside an alienation of property, made by one or more trustees, directors, managers, or other officers of a corporation, contrary to a provision of law, or for a purpose foreign to the lawful business and objects of the corporation, where the alienee knew the purpose of the alienation.

6. Restraining and preventing such an alienation, where it is threatened, or where there is good reason to apprehend that it will be made.

Article does not apply to certain corporations. § 1804. Officers to testify. § 1805. Injunction restraining creditors. § 1806. When attorney-general must bring action. §§ 1782, 1808. Receiver may be appointed. § 1810. Actions under subdivisions 3, 4. § 1811. A receiver appointed

under this article has the powers and is subject to the obligations of a receiver appointed by a court of equity. There is no provision of statute expressly conferring upon such a receiver the powers of a receiver appointed in a proceeding for the voluntary dissolution of a corporation, as is provided by sections 1788, 1793, in the case of a receiver appointed in a creditor's action to sequester the property of a corporation or in an action to dissolve the corporation at the suit of the people, a creditor or stockholder.

The official misconduct which will support an action brought under this section to charge the directors with that offense, must exceed misfeasance and amount to actual malfeasance in office. The mere misconception of his rights and impropriety and unlawfulness of action, by a director of a corporation, afford no grounds for convicting him of malfeasance in office, which necessarily involves a corrupt intent. *Stokes v. Stokes*, 23 App. Div. 552.

The attorney-general may bring an action under this section to remove the trustees of a domestic manufacturing corporation for misconduct, and to compel them to account for and pay over to the corporation or its creditors the value of any property transferred in violation of their duties. *People v. Ballard*, 134 N. Y. 269; 32 N. E. Rep. 54.

The attorney-general may bring an action under this section to compel the officers of a corporation to account for their official conduct in the management and disposition of the funds and property committed to their charge, and also to procure a judgment suspending them from office, where it appears that they have abused their rights and the action need not be brought on the relation of any private person. *People v. Lowe*, 47 Hun, 577 (1888).

Only a judgment creditor may maintain an action under this section against directors for misconduct. *Paulsen v. Van Steenberg*, 65 How. Pr. 342 (1883).

A preliminary injunction and the appointment of a receiver are proper where a director makes a prima facie case, in an action against a co-director for restitution for violation of his trust, under this section. *Piza v. Butler*, 90 Hun, 254; 70 N. Y. St. Rep. 501 (1895).

Where a receiver has been appointed in an action for an accounting by directors of a corporation and for injunction against alienation of the corporate property, etc., but a dissolution of the corporation is not demanded, nor is the corporation insolvent, it is not necessary to continue the receivership after the offending directors have retired. *Halpin v. Mutual Brewing Co.*, 91 Hun, 220; 72 N. Y. St. Rep. 52 (1895).

Where the removal of a vice-president and trustee by the trustees has been irregular and not in accordance with the by-laws requiring notice, the vice-president is not prevented from bringing an action under this section. *Halpin v. Mutual Brewing Co.*, 20 App. Div. 583 (1897).

Any of the directors of a corporation may main-

tain an action under this section against an officer to enforce the payment of money to it. 68 Hun, 532; 52 N. Y. St. Rep. 559 (1893).

#### Actions by stockholders.

Stockholders can only proceed against the officers of a corporation for a breach of trust, when the corporation will not sue for their benefit. *Graves v. Gouge*, 1 Week. Dig. 527 (1875); *Young v. Drake*, 8 Hun, 61 (1876); *Smith v. Rathbone*, 22 Hun, 150 (1880); *Werthim v. Page*, 10 Week. Dig. 26 (1880); *Nelson v. Burrows*, 9 Abb. N. C. 280 (1881); *Gray v. N. Y. & Virginia Steamship Co.*, 3 Hun, 383 (1875); *Stromeyer v. Combes*, 18 N. Y. St. Rep. 154 (1888).

Where the corporation is exclusively under the control of the trustees and officers whose acts and management are questioned, a demand that the corporation bring the action would be idle and fruitless and is unnecessary. *Sage v. Culver*, 14 Misc. Rep. 241; 69 N. Y. St. Rep. 524 (1895).

A request to the corporation to bring a suit against certain officers for mismanagement is not necessary where such officers are of themselves in control of the corporation and would be the defendants in such suit. *Auderton v. Wolf*, 41 Hun, 571 (1886).

Application to the corporation to sue is not necessary where the action is to protect rights of the individual shareholders suing, as distinguished from others of the corporation. *Meyers v. Scott*, 20 N. Y. St. Rep. (1888); *Sheridan v. Sheridan Electric Light Co.*, 38 Hun, 396 (1886).

#### By whom action to be brought.

§ 1782. An action may be brought, as prescribed in the last section, by the attorney-general in behalf of the people of the State; or, except where the action is brought for the purpose specified in subdivision third or fourth of that section, by a creditor of the corporation, or by a trustee, director, manager, or other officer of the corporation, having a general superintendence of its concerns.

See as to exception, § 1811, post. Various provisions governing action. §§ 1804-13, post. See note to last preceding section.

#### This article, how construed.

§ 1783. This article does not divest or impair any visitatorial power over a corporation, which is vested by statute in a corporate body, or a public officer.

#### V. Actions to Sequester the Property of a Corporation and Actions to Procure the Dissolution thereof.

(Code Civ. Pro., ch. 15, tit. 2, art. 3.)

Sec. 1784. Action by judgment creditor for sequestration, etc.

1785. Action to dissolve a corporation.

1786. Id.; by whom to be brought.

1787. Temporary injunction.



## Actions — Code, §§ 1784, 1785.

- Sec. 1788. Receiver may be appointed. Permanent and temporary receiver. Powers, etc., of temporary receiver.
1789. Additional powers and duties may be conferred upon temporary receiver.
1790. Making stockholders, etc., parties.
1791. When separate action may be brought against them.
1792. Proceedings in either action.
1793. Judgment; property of corporation to be distributed.
1794. Id.; stock subscriptions to be recovered.
1795. Id.; as to liabilities of directors and stockholders.
1796. Effect of this article limited.

**Action by judgment creditor for sequestration, etc.**

§ 1784. Where final judgment for a sum of money has been rendered against a corporation created by or under the laws of the State, and an execution, issued thereupon to the sheriff of the county, where the corporation transacts its general business, or where its principal office is located, has been returned wholly or partly unsatisfied, the judgment creditor may maintain an action to procure a judgment, sequestrating the property of the corporation, and providing for a distribution thereof, as prescribed in section 1793 of this act.

A receiver may be appointed. §§ 1788, 1793, 1810. Article does not apply to certain corporations. § 1804. Provisions regulating action. §§ 1804-13. Powers of receiver, see "Receivers."

A creditor of a corporation cannot maintain an action for the sequestration of its property until final judgment in his favor and issue and return unsatisfied of an execution. *Rodburn v. Utica, Ithaca & E. R. R. Co.*, 28 Hun, 369 (1882).

A judgment creditor who has no lien on its property is not entitled to a notice under this section. *Morrison v. Menhaden Co.*, 37 Hun, 522 (1885).

One creditor may maintain an action under this section, and need not allege that he sues for the benefit of the other creditors. *Woodard v. Holland Medicine Co.*, 39 N. Y. St. Rep. 411 (1891).

A judgment of sequestration does not of itself dissolve the corporation. *Kincaid v. Dwinelle*, 59 N. Y. 548; *Hollingshead v. Woodward*, 35 Hun, 410 (1885); *Mann v. Pentz*, 3 N. Y. 415; and though a receiver be appointed thereunder, the corporation may yet appeal from a judgment against it for costs in an action brought by it. *Auburn Button Co. v. Sylvester*, 68 Hun, 401; 52 N. Y. St. Rep. 180 (1893).

The phrase "created by, under the laws of the State," is always used in the sense of a thing brought into existence by or under statute law. *Brinckerhoff v. Bostwick*, 90 N. Y. 185; *Mann v. Pentz*, 3 id. 415. An action may be brought by one creditor without joining others or stat-

ing that it is for their benefit. *Woodward v. Holland Med. Co.*, 39 N. Y. St. Rep. 411. A judgment appointing a receiver in an action brought by a creditor under this section does not dissolve the corporation or prevent the prosecution of actions against it. *People v. Troy Steel & Iron Co.*, 82 Hun, 303; 63 N. Y. St. Rep. 787. The mere fact that officers and directors have made use of their position to secure or promote selfish interests, does not of itself warrant a dissolution under this section. *Watkins v. Watkins & Turner Lumber Co.*, 11 App. Div. 517. A proceeding under this section is an equitable action and a judgment creditor may, if a fraudulent transfer of the corporate property is alleged, join as parties defendant the persons who hold such property in their possession. *Proctor v. Sidney Sash & Furniture Co.*, 8 App. Div. 42.

A judgment creditor's action for the sequestration under section 1784 cannot be maintained against a foreign corporation. *Burgoyne v. Eastern & Western Railway Co.*, 13 N. Y. Supp. 537 (Special Term, 1890).

A judgment appointing a receiver to sequester the property of a corporation cannot be attacked collaterally in action by him to avoid transfers of its property made by the corporation. *Jones v. Blun*, 145 N. Y. 333; 39 N. E. Rep. 954; 64 N. Y. St. Rep. 806 (1895).

A receiver may be appointed in an action to sequester the property of a corporation, although another receiver has been previously appointed by another court, where the last order contains a provision that nothing therein contained shall affect the right and power of the receiver first appointed. *Thau v. Bankers & Merchants' Tel. Co.*, 56 Super. Ct. 588 (1888).

A receiver of a corporation appointed in an action for the sequestration of its property has all the power and authority of a receiver appointed upon the voluntary dissolution of a corporation, and may bring an action to which the holders of outstanding bonds of the company secured by a mortgage upon its property, are parties, to determine to what extent the mortgage and bonds are valid and effectual as a lien upon the property which came to his hands as receiver. *Hubbell v. Syracuse Iron Co.*, 42 Hun, 182 (1886).

It seems that the Supreme Court has no jurisdiction to appoint a receiver of the property of a corporation in an action brought by a general creditor whose claim has not been established by judgment. *Lehigh Coal, etc., Co. v. Central R. R. of New Jersey*, 43 Hun, 546 (1887).

**Action to dissolve a corporation.**

§ 1785. In either of the following cases, an action to procure a judgment, dissolving a corporation, created by or under the laws of this State, and forfeiting its corporate rights, privileges, and franchises, may be maintained as prescribed in the next section:

1. Where the corporation has remained insolvent for at least one year.
2. Where it has neglected or refused, for at least one year, to pay and discharge its notes or other evidences of debt.

3. Where it has suspended its ordinary and lawful business for at least one year.

4. If it has banking powers, or power to make loans on pledges or deposits, or to make insurances, where it becomes insolvent or unable to pay its debts, or has violated any provision of the action, by or under which it was incorporated, or of any other act binding upon it.

Does not apply to certain corporations. § 1804. Receiver may be appointed. §§ 1788, 1793, 1810. For powers of receiver, see "Receivers." General provisions relating to action, §§ 1804-13.

Section 1785 only authorizes an action for forfeiture where the corporation has suspended its ordinary and lawful business for at least one year, and section 1798 contains no rule of liability whatever, but simply points out a mode of procedure to enforce duties or punish misconduct elsewhere and otherwise settled and determined. *People v. Atlantic Ave. R. R. Co.*, 125 N. Y. 513; 26 N. E. Rep. 622; 35 N. Y. St. Rep. 872 (1891).

A mere non-user must be for the full period of one year, and a non-user for a less time will be no ground for dissolution. *Id.*

The insolvency contemplated is a general inability to answer its present liabilities. *Brower v. Harbeck*, 9 N. Y. 589.

The entry of judgments against a corporation and inability to collect them on execution establishes its insolvency. *Nealis v. American Tube & Iron Co.*, 76 Hun, 220; 59 N. Y. St. Rep. 120 (1894).

The power of a court to dissolve a corporation depends solely on the statute, and the jurisdictional facts must be pleaded. *Osborn v. Montelac Park*, 89 Hun, 167 (1895).

Where jurisdictional facts are not alleged and a decree for dissolution is rendered, it is void as to that portion of the decree, although it may be sustained as to the sequestration of the corporate property. *Id.*

A denial that the defendant is organized for "manufacturing, mining, mechanical or chemical purposes," is not a defense, as the section applies to all corporations. *People v. Excelsior Gas Light Co.*, 8 Civ. Pro. Rep. 390 (1886).

Where an application for the appointment of a receiver of a mutual insurance company is made on the ground of its insolvency, the provisions of section 1785 are limited by the requirement of the Insurance Law, § 43, that notice be given to the officers of the company to have the alleged deficiency made good. *People v. Equitable Mutual Fire Ins. Co.*, 12 Misc. Rep. 556; 67 N. Y. St. Rep. 377 (1895).

*Id.*; by whom to be brought.

§ 1786. (Amended by ch. 301 of 1880.) An action specified in the last section may be maintained by the attorney-general in the name and in behalf of the people; and whenever a creditor or stockholder of any corporation submits to the attorney-general

a written statement of facts, verified by oath, showing grounds for an action under the provisions of the last section, and the attorney-general omits, for sixty days after this submission, to commence an action specified in the last section, then, and not otherwise, such creditor or stockholder may apply to the proper court for leave to commence such an action, and on obtaining leave may maintain the same accordingly.

An action may be maintained by the attorney-general under this section and by the directors of the corporation under section 2429 at the same time, but judgment of dissolution in the one action operates as an abatement of the other. *In re Murray Hill Bank*, 14 App. Div. 318 (1897); *People v. Seneca, L. G. & W. Co.*, 52 Hun, 174 (1889).

A court has no jurisdiction to appoint a receiver of a corporation upon a petition of stockholders which shows that the corporation will eventually have sufficient assets to meet its liabilities, and that some creditors are threatening to bring suit which would be prejudicial to the claims of other creditors which are not yet due. *Matter of Atlas Iron Construction Co.*, 2 N. Y. Ann. Cases, 124 (1895).

#### Temporary injunction.

§ 1787. In an action, brought as prescribed in this article, the court may, upon proof of the facts authorizing the action to be maintained, grant an injunction order, restraining the corporation, and its trustees, directors, managers, and other officers, from collecting or receiving any debt or demand, and from paying out, or in any way transferring or delivering to any person, any money, property, or effects of the corporation, during the pendency of the action; except by express permission of the court. Where the action is brought to procure the dissolution of the corporation, the injunction may also restrain the corporation, and its trustees, directors, managers, and other officers from exercising any of its corporate rights, privileges, or franchises, during the pendency of the action; except by express permission of the court. The provisions of title second of chapter seventh of this act, relating to the granting, vacating, or modifying of an injunction order, apply to an injunction order, granted as prescribed in this section; except that it can be granted only by the court.

Receiver may be appointed. Permanent and temporary receiver. Powers, etc., of temporary receiver.

§ 1788. In such an action, the court may also, at any stage thereof, appoint one or more receivers of the property of the corporation. A receiver, so appointed, before final judgment, is a temporary receiver, until final judgment is entered. A temporary receiver has power to collect and receive

the debts, demands and other property of the corporation; to preserve the property, and proceeds of the debts and demands collected; to sell or otherwise dispose of the property as directed by the court; to collect, receive and preserve the proceeds thereof; and to maintain any action or special proceeding, for either of those purposes. He must qualify as prescribed by law for the qualification of a permanent receiver. Unless additional powers are specially conferred upon him, as prescribed in the next section, a temporary receiver has only the powers specified in this section, and those which are incidental to the exercise thereof, a receiver appointed by or pursuant to a final judgment in the action, or a temporary receiver who is continued by the final judgment, is a permanent receiver, and has all the powers and authority conferred, and is subject to all the duties and liabilities imposed upon a receiver appointed\* the voluntary dissolution of a corporation. (Amended by ch. 399 of 1882. See § 2.)

For powers of receivers appointed under this section, see "Receivers." This and the next section are applicable to a temporary receiver appointed in a proceeding for the voluntary dissolution of a corporation. § 2423. The section is fully annotated under heading "temporary receivers" in article on "Receivers."

**Additional powers and duties may be conferred upon temporary receiver.**

§ 1789. A temporary receiver, appointed as prescribed in the last section, is, in all respects, subject to the control of the court. In addition to the powers conferred upon him, by the provisions of the last section, the court may, by the order or interlocutory judgment appointing him, or by an order subsequently made in the action, or by the final judgment, confer upon him, the powers and authority, and subject him to the duties and liabilities, of a permanent receiver, or so much thereof as it thinks proper; except that he shall not make any distribution among the creditors or stockholders, before final judgment, unless he is specially directed so to do by the court.

See note to last section.

**Making stockholders, etc., parties.**

§ 1790. Where the action is brought by a creditor of a corporation, and the stockholders, directors, trustees, or other officers, or any of them, are made liable by law, in any event or contingency, for the payment of his debt, the persons so made liable, may be made parties defendant, by the original or by a supplemental complaint; and their liability may be declared and enforced by the judgment in the action.

\* So in the original.

**When separate action may be brought against them.**

§ 1791. Where the stockholders, directors, trustees, or other officers of a corporation, who are made liable, in any event or contingency, for the payment of a debt, are not made parties defendant, as prescribed in the last section, the plaintiff in the action may maintain a separate action against them, to procure a judgment, declaring, apportioning, and enforcing their liability.

**Proceedings in either action.**

§ 1792. In an action, brought as prescribed in either of the last two sections, the court must, when it is necessary, cause an account to be taken of the property and of the debts of the corporation, and thereupon the defendant's liability must be apportioned accordingly; but, if it affirmatively appears, that the corporation is insolvent, and has no property to satisfy its creditors the court may, without taking such an account, ascertain and determine the amount of each defendant's liability, and enforce the same accordingly.

**Judgment; property of corporation to be distributed.**

§ 1793. A final judgment in an action, brought against a corporation, as prescribed in this article, either separately or in conjunction with its stockholders, directors, trustees, or other officers, must provide for a just and fair distribution of the property of the corporation, and of the proceeds thereof, among its fair and honest creditors, in the order and in the proportions prescribed by law, in case of the voluntary dissolution of a corporation.

For powers, etc., of receiver, see "Receivers."

**Id.; stock subscriptions to be recovered.**

§ 1794. Where the stockholders of the corporation are parties to the action, if the property of the corporation is not sufficient to discharge its debts, the interlocutory or final judgment, as the case requires, must adjudge that each stockholder pay into court the amount due and remaining unpaid, on the shares of stock held by him, or so much thereof as is necessary to satisfy the debts of the corporation.

**Id.; as to liabilities of directors and stockholders.**

§ 1795. If it appears, that the property of the corporation, and the sums collected or collectible from the stockholders, upon their stock subscriptions, are or will be insufficient to pay the debts of the corporation, the court must ascertain the several sums, for which the directors, trustees, or other officers, or the stockholders of the



corporation, being parties to the action, are liable; and must adjudge that the same be paid into court, to be applied, in such proportions and in such order as justice requires, to the payment of the debts of the corporation.

#### Effect of this article limited.

§ 1796. This article does not repeal or affect any special provision of law, prescribing that a particular kind of corporation shall cease to exist, or shall be dissolved, in a case or in a manner, not prescribed in this article; or any special provision of law, prescribing the mode of enforcing the liability of the stockholders of a particular kind of corporation.

### VI. Action by the People to Annul a Corporation.

(Code Civ. Pro., ch. 15, tit. 2, art. 4.)

Sec. 1797. Action by attorney-general, when legislature directs.

1798. Id.; by leave of court.

1799. Leave; when and how granted.

1800. Action triable by a jury.

1801. Judgment.

1802. Injunction may issue.

1803. Copy of judgment-roll to be filed and published.

#### Action by attorney-general, when legislature directs.

§ 1797. The attorney-general, whenever he is so directed by the legislature, must bring an action against a corporation created by or under the laws of the State, to procure a judgment, vacating or annulling the act of incorporation, or any act renewing the corporation, or continuing its corporate existence, upon the ground that the act was procured upon a fraudulent suggestion, or the concealment of a material fact, made by or with the knowledge and consent of any of the persons incorporated.

#### Id.; by leave of court.

§ 1798. Upon leave being granted, as prescribed in the next section, the attorney-general may bring an action against a corporation created by or under the laws of the State, to procure a judgment, vacating the charter or annulling the existence of the corporation upon the ground that it has, either

1. Offended against any provision of an act, by or under which it was created, altered, or renewed, or an act amending the same, and applicable to the corporation; or,

2. Violated any provision of law, whereby it has forfeited its charter, or become liable to be dissolved, by the abuse of its powers; or,

3. Forfeited its privileges or franchises, by a failure to exercise its powers; or,

4. Done or omitted any act, which amounts to a surrender of its corporate rights, privileges, and franchises; or,

5. Exercised a privilege or franchise, not conferred upon it by law.

Does not apply to certain corporations. § 1804. Provisions regulating action. §§ 1804-13. A temporary receiver cannot be appointed but only a permanent receiver by final judgment. § 1801.

The remedy offered for the restraint and punishment of corporations for illegal conduct in the exercise of privileges or franchises not conferred upon them by law; is through an action by the attorney-general to suspend their functions or annul their charters. *Thomas v. M. M. P. Union*, 121 N. Y. 45; 24 N. E. Rep. 24. There is no conflict between this section and section 1785. *People v. Atlantic Ave. R. R. Co.*, 10 N. Y. Supp. 907.

To sustain an action by the people to dissolve a corporation for violation of law or abuse of its powers, two things must be shown; first, that the defendant corporation has exceeded its powers; and second, that such excesses or abuses threaten or harm the public welfare. *People v. North River Sugar Refining Co.*, 121 N. Y. 582; 31 N. Y. St. Rep. 781 (1890).

The pendency of a proceeding for the voluntary dissolution of a corporation will not constitute a bar to an action instituted by the attorney-general for the purpose of securing the dissolution of such corporation. *People v. Seneca Lake Grape & Wine Co.*, 52 Hun, 174; 23 N. Y. St. Rep. 346 (1889); *People v. Murray Hill Bank*, 10 App. Div. 328 (1896).

An action brought by the attorney-general to vacate the charter of a corporation or annul its existence on the ground that it has offended against any provision of an act by or under which it was created, or has violated any provision of law whereby it has forfeited its rights, may be brought without a relator, and is strictly a people's action. *People v. Buffalo Stone & Cement Co.*, 131 N. Y. 140; 42 N. Y. St. Rep. 753 (1892).

Upon granting leave to the attorney-general to bring an action to vacate the charter of a corporation, the court has only to inquire whether the attorney-general alleges against the corporation a prima facie case. *Matter of Attorney-General*, 50 Hun, 511; 20 N. Y. St. Rep. 383 (1888).

An order permitting an action to be brought to annul the charter of a corporation should only be granted on the application of the attorney-general stating that in his opinion the action can and should be maintained for the reasons given. *Matter of Attorney-General*, 79 Hun, 369; 61 N. Y. St. Rep. 437 (1894).

Authority will not be granted to the attorney-general as of course for leave to bring an action to vacate the charter of a corporation, and the facts on which he proposes to proceed, and not his conclusions therefrom, must be stated in his application. *Matter of Attorney-General*, 81 Hun, 541; 63 N. Y. St. Rep. 281 (1894).

An action brought by the people to effect the dissolution of a corporation does not of itself

divest the title of the corporation to a cause of action for tort, but the corporation may sue upon the same at any time before the final judgment dissolving the corporation, and making the receiver permanent. The receiver may assign the same with the assets of the corporation so as to allow the purchaser to be substituted in the action. *Mutual Brewing Co. v. N. Y. & College Point Ferry Co.*, 16 App. Div. 149 (1897).

An order granting leave under this section will not be reviewed upon appeal excepting in extreme case. *People v. Boston, H. T. & W. R. R. Co.*, 27 Hun, 528.

On an appeal from an order granting the attorney-general leave to bring a suit to vacate the charter of a corporation, the Supreme Court will not determine the merits of the action. *Matter of the Attorney-General v. Ulster & Delaware R. R. Co.*, 50 Hun, 511; 18 N. Y. St. Rep. 122.

A provision of a statute that a corporation forfeits its charter or forfeits the rights acquired thereby unless certain acts are performed, does not ipso facto dissolve the corporation or deprive it of its corporate existence, but simply exposes it to proceedings, on behalf of the State, to establish and enforce the forfeiture. *Matter of Brooklyn Elevated R. R. Co.*, 125 N. Y. 434; 26 N. E. Rep. 474; 35 N. Y. St. Rep. 451 (1891).

Under a statute providing that if a corporation does not perform certain acts "such corporation shall be dissolved" failure of performance does not ipso facto dissolve the corporation. *Day v. Ogdensburg, etc., R. R. Co.*, 107 N. Y. 179; 13 N. E. Rep. 765 (1887).

A provision in the charter of a corporation that unless it commences business within a certain time, "or this act and all rights and privileges granted hereby shall be null and void," does not ipso facto vacate the charter, but simply authorizes the attorney-general to treat the charter as voidable. *Matter of N. Y. & Long Island Bridge Co.*, 148 N. Y. 540; 42 N. E. Rep. 1088; aff'g 90 Hun, 312; 70 N. Y. St. Rep. 586 (1896).

The mere fact that a railroad corporation has failed to operate its road for five successive days, does not authorize the bringing of an action to forfeit its charter. *People v. Atlantic Ave. R. R. Co.*, 125 N. Y. 513; 26 N. E. Rep. 622; 35 N. Y. St. Rep. 872 (1891).

Even the wilful neglect of a railroad corporation to exercise all its franchises, does not ipso facto terminate its corporate existence, but to effect that result the attorney-general must not only elect to enforce the forfeitures, but also procure leave from the court to bring an action for that purpose under section 1798. *People v. Ulster & Delaware R. R. Co.*, 128 N. Y. 240; 28 N. E. Rep. 635; aff'g 58 Hun, 266; 34 N. Y. St. Rep. 983 (1891). Such actions are not even then maintainable unless some public interest is involved which requires the exercise of the franchise by the corporation. *Id.*

The failure of a manufacturing corporation to file an annual report is a ground of forfeiture at the suit of the attorney-general, independently of the liability of the directors. *People v. Buffalo Stone & Cement Co.*, 131 N. Y. 140; 42 N. Y. St. Rep. 753 (1892).

Where a corporation has never exercised its powers and franchises, but its sole business is to fix the market price at which a commodity shall be bought and sold, and its non-user was wilful and without justification, it is proper for the attorney-general to bring an action for its dissolution. *People v. Milk Exchange*, 133 N. Y. 565; 30 N. E. Rep. 850; 44 N. Y. St. Rep. 500 (1892).

A combination of milk dealers and creamery men to fix and control the prices they should pay for milk was held to be unlawful, and a judgment annulling the corporation in an action in the name of the people proper in *People v. Milk Exchange*, 145 N. Y. 267; 39 N. E. Rep. 1062; 64 N. Y. St. Rep. 694 (1895).

It seems that an action by the attorney-general to annul an added franchise or grant to a corporation is within the scope of the provisions of section 1798. *People v. Broadway R. R. Co.*, of Brooklyn, 126 N. Y. 29; 26 N. E. Rep. 961; 36 N. Y. St. Rep. 376.

#### Leave; when and how granted.

§ 1799. Before granting leave, the court may, in its discretion, require such previous notice of the application as it thinks proper, to be given to the corporation, or any officer thereof, and may hear the corporation in opposition thereto.

#### Action triable by a jury.

§ 1800. An action, brought as prescribed in this article, is triable, of course and of right, by a jury, as if it was an action specified in section 968 of this act, and without procuring an order, as prescribed in section 970 of this act.

Section 968 refers to an action in which the complaint demands judgment for a sum of money, in which an issue of fact must be tried by jury, unless the jury trial is waived, and without the framing of issues as provided by section 970.

#### Judgment.

§ 1801. Where any of the matters, specified in section 1797 or section 1798 of this act, are established in an action, brought as prescribed in either of those sections, the court may render final judgment that the corporation, and each officer thereof, be perpetually enjoined from exercising any of its corporate rights, privileges, and franchises; and that it be dissolved. The judgment must also provide for the appointment of a receiver, the taking of an account, and the distribution of the property of the corporation, among its creditors and stockholders, as where a corporation is dissolved upon its voluntary application, as prescribed in chapter seventeenth of this act.

There is no provision for the appointment of a temporary receiver in an action under this article. Receiver may be appointed. § 1804. Powers of receiver, see "Receivers."

In an action to dissolve a corporation all creditors and stockholders are represented by the attorney-general, and the creditors are subject to the summary jurisdiction of the court in the case of distribution of the assets. *Webster v. Kings County Trust Co.*, 80 Hun, 420 (1894).

#### Injunction may issue.

§ 1802. In an action, brought as prescribed in this article, an injunction order may be granted, at any stage of the action, restraining the corporation, and any or all of its directors, trustees, and other officers, from exercising any of its corporate rights, privileges, or franchises; or from exercising certain of its corporate rights, privileges, or franchises specified in the injunction order; or from exercising any franchise, liberty, or privilege, or transacting any business, not allowed by law. Such an injunction is deemed one of those specified in section 603 of this act, and all the provisions of title second of chapter seventh of this act, applicable to an injunction specified in that section, apply to an injunction granted as prescribed in this section, except that it can be granted only by the court.

See § 603, ante, "Provisions of the Code of Civil Procedure."

#### Copy of judgment-roll to be filed and published.

§ 1803. Where final judgment is rendered against a corporation, in an action, brought as prescribed in this article, the attorney-general must cause a copy of the judgment-roll to be forthwith filed in the office of the secretary of State, who must cause a notice of the substance and effect of the judgment, to be published, for four weeks, in the newspaper printed at Albany, in which legal notices are required to be published, and also in a newspaper printed in the county, wherein the principal place of business of the corporation was located.

#### VII. Provisions Applicable to Two or More of the Actions Specified.

(Code Civ. Pro., ch. 15, tit. 2, art. 5.)

Sec. 1804. Certain corporations excepted from certain articles of this title.

1805. Officers and agents may be compelled to testify.

1806. Injunction staying actions by creditors.

1807. Creditors may be brought in.

1808. When attorney-general must bring action.

1809. Requisites of injunction against corporations in certain cases.

1810. Id.; of order appointing receiver in certain cases.

Sec. 1811. Id.; of judicial suspension or removal of an officer.

1812. Application of the last three sections.

1813. In action against stockholders, misnomer, etc., not available.

#### Certain corporations excepted from certain articles of this title.

§ 1804. Articles second, third, and fourth of this title do not apply to an incorporated library society; to a religious corporation; to a select school or academy, incorporated by the regents of the university, or by an act of the legislature; or to a municipal or other political corporation, created by the Constitution, or by or under the laws of the State.

#### Officers and agents may be compelled to testify.

§ 1805. In an action, brought as prescribed in article second, third, or fourth of this title, a stockholder, officer, alienee, or agent of a corporation, is not excused from answering a question, relating to the management of the corporation, or the transfer or disposition of its property, on the ground that his answer may expose the corporation to a forfeiture of any of its corporate rights, or will tend to convict him of a criminal offense, or to subject him to a penalty or forfeiture. But his testimony shall not be used, as evidence against him, in a criminal action or special proceeding.

#### Injunction staying actions by creditors.

§ 1806. In such an action, the court may, in its discretion, on the application of either party, at any stage of the action, before or after final judgment, and with or without security, grant an injunction order, restraining the creditors of the corporation from bringing actions against the defendants, or any of them, for the recovery of a sum of money, or from taking any further proceedings in such actions, theretofore commenced. Such an injunction has the same effect, and, except as otherwise expressly prescribed in this section, is subject to the same provisions of law, as if each creditor, upon whom it is served, was named therein, and was a party to the action in which it is granted.

#### Creditors may be brought in.

§ 1807. In such an action the court may at any stage of the action, before or after final judgment, make an order requiring all the creditors of the corporation to exhibit and prove their claims, and thereby make themselves parties to the action, in such a manner and in such a reasonable time not less than six months from the first publication of notice of the order as the court directs; and that the creditors who make de-



fault in so doing shall be precluded from all benefit of the judgment and from any distribution which may be made thereunder, except as hereinafter provided. Notice of the order must be given, by publication, in such newspapers and for such a length of time as the court directs. Notwithstanding such order any such creditor who shall exhibit and prove his claim in the manner directed thereby, with proof, by affidavit or otherwise, that he has had no notice or knowledge thereof in time to comply therewith, any time before an order is made directing a final distribution of the assets of such corporation, shall be entitled to have his claim received, and shall have the same rights and benefits thereon, so far as the assets of such corporation then remaining undistributed may render possible, as if his claim had been exhibited and proved within the time limited by such order. (Amended by ch. 372 of 1886.)

#### When attorney-general must bring action.

§ 1808. Where the attorney-general has good reason to believe, that an action can be maintained in behalf of the people of the State, as prescribed in article second, third, or fourth of this title, except section 1797 of this act, he must bring an action accordingly, or apply to a competent court for leave to bring an action, as the case requires; if, in his opinion, the public interests require that an action should be brought. In a case where the action can be brought only by the attorney-general in behalf of the people, if a creditor, stockholder, director, or trustee of the corporation, applies to the attorney-general for that purpose, and furnishes the security required by law, the attorney-general must bring the action, or apply for leave to bring it, if he has good reason to believe, that it can be maintained. Where such an application is made, section 1986 of this act applies thereto, and to the action brought in pursuance thereof.

#### Requisites of injunction against corporations in certain cases.

§ 1809. An injunction order, suspending the general and ordinary business of a corporation, or of a joint-stock association, consisting of seven or more persons, or suspending from office, or restraining from the performance of his duties, a trustee, director, or other officer thereof, can be granted only by the court, upon notice of the application therefor, to the proper officer of the corporation or association, or to the trustee, director, or other officer enjoined. If such an injunction order is made, otherwise than as prescribed in this section, it is void.

#### Id.; of order appointing receiver in certain cases.

§ 1810. A receiver of the property of a corporation can be appointed only by the court, and in one of the following cases:

1. An action, brought as prescribed in article second, third, or fourth of this title.

2. An action brought for the foreclosure of a mortgage upon the property, of which the receiver is appointed, where the mortgage debt, or the interest thereupon, has remained unpaid, at least thirty days after it was payable, and after payment thereof was duly demanded of the proper officer of the corporation; and where either the income of the property is specifically mortgaged, or the property itself is probably insufficient to pay the mortgage debt.

3. An action brought by the attorney-general, or by a stockholder, to preserve the assets of a corporation, having no officer empowered to hold the same.

4. A special proceeding for the voluntary dissolution of a corporation.

Where the receiver is appointed in an action, otherwise than by or pursuant to a final judgment, notice of the application for his appointment, must be given to the proper officer of the corporation.

See "Receivers," where this section is fully annotated.

#### Id.; of judicial suspension or removal of an officer.

§ 1811. A trustee, director, or other officer of a corporation shall not be suspended or removed from office, by a court or judge, otherwise than by the final judgment of a competent court, in an action brought by the attorney-general, as prescribed in section 1781 of this act.

#### Application of the last three sections.

§ 1812. The last three sections apply to an action or a special proceeding, against a corporation, or joint-stock association created by or under the laws of the State, or a trustee, director, or other officer thereof; or against a corporation, or joint-stock association created by or under the laws of another State, government, or country, or a trustee, director, or other officer thereof, where the corporation or association does business within the State, or has, within the State, a business agency or a fiscal agency, or an agency for the transfer of its stock.

In action against stockholders, misnomer, etc., not available.

§ 1813. Where an action, authorized by a law of the State, is brought against one or more persons, as stockholders of a corporation or joint-stock association, an objection to any of the proceedings cannot be

taken, by a person properly made a defendant in the action, on the ground that the plaintiff has joined with him, as a defendant in the action, a person whose name appears on the stock-books of the corporation or association, as a stockholder thereof, by the name so appearing, but who is misnamed, or dead, or is not liable for any cause. In such a case, the court may, at any time before final judgment, upon motion of either party, amend the pleadings and other papers, without prejudice to the previous proceedings, by substituting the true name of the person intended, or by striking out the name of the person who is dead, or not liable, and, in a proper case, inserting the name of his representative or successor.

### VIII. Proceedings for the Voluntary Dissolution of a Corporation.

(Code Civ. Pro., ch. 17, tit. 9.)

Sec. 2419. When a majority of directors, etc., may petition for dissolution.

2420. *Id.*; when they are equally divided.

2421. Contents of petition.

2422. Affidavit to be annexed.

2423. Presentation of petition, etc. Order to show cause.

2424. Order to be published.

2425. *Id.*; to be served on creditors and stockholders.

2426. Hearing.

2427. *Id.*; original papers may be used.

2428. Application for final order.

2429. Final order.

2430. Certain sales, etc., void.

2431. Certain corporations excepted from this title.

When a majority of directors, etc., may petition for dissolution.

§ 2419. If a majority of the directors, trustees, or other officers, having the management of the concerns of a corporation created by or under the laws of the State, discover that the stock, effects, and other property thereof are not sufficient to pay all just demands, for which it is liable, or to afford a reasonable security to those who may deal with it; or if, for any reason, they deem it beneficial to the interest of the stockholders that the corporation should be dissolved, they may present a petition to the supreme court, praying for a final order dissolving the corporation, as prescribed in this title. (Amended by ch. 946 of 1895. In effect Jan. 1, 1896.)

Proceeding for voluntary dissolution, and winding up by directors without appointment of receiver. Stock Corp. L., § 57, ante.

A proceeding for the voluntary dissolution of a corporation rests upon the statute and not upon the general equity powers of the court. Matter

of Binghamton General Electric Co., 143 N. Y. 261; 38 N. E. Rep. 297 (1894); and the method of effecting corporate dissolution prescribed by statute is exclusive. Matter of Importers & Grocers' Exchange, 132 N. Y. 212; 30 N. E. Rep. 401; 43 N. Y. St. Rep. 625 (1892).

The provisions of the Code for the voluntary dissolution of a corporation do not apply to an incorporated library society, a religious corporation, or to a select school or academy incorporated by the regents, or by the legislature, or to a municipal or other political corporation, all of which are exempted by section 2431, post. Matter of American D. F. Association, 22 Abb. N. C. 231; Matter of Sportsmen's Association, 15 Civ. Pro. Rep. 215; 17 N. Y. St. Rep. 879.

When the interests of the stockholders of a corporation are so discordant as to prevent efficient management, and a large majority of both trustees and members wish to wind up its affairs, a dissolution should be ordered though the corporation is solvent and a minority oppose. Matter of Importers & Grocers' Exchange, 132 N. Y. 212; 30 N. E. Rep. 401; 43 N. Y. St. Rep. 625 (1892).

A statement that "the petitioners are convinced that if the methods and plans advocated and pursued by certain stockholders in relation to the management of the corporation are carried out, the result will be the financial ruin of the corporation," is insufficient. Matter of Pyrolusite Manganese Co., 29 Hun, 429 (1883).

Where the directors of an insolvent corporation refuse to take proceedings for its dissolution, a stockholder may maintain such action, and if necessary to protect creditors a receiver will be appointed. Porter v. Industrial Information Co., 5 Misc. Rep. 263 (1893).

One holding stock as executor may become at least a de facto trustee of the corporation, and as such join in a petition for its dissolution. In re Santa Eulalia S. M. Co., 21 N. Y. St. Rep. 89.

*Id.*; when they are equally divided.

§ 2420. If a corporation created under a general statute of the State for the formation of corporations or under any special act or charter has an even number of trustees or directors who are equally divided respecting the management of its affairs or if the stock of such corporation is equally divided into not more than two independent ownerships or interests, or if the entire stock of the corporation is at that time owned by the trustees or directors who are even in number or equally divided representing the management of its affairs, or if the stock is so divided that one-half thereof is owned or controlled by persons favoring the course of part of the trustees or directors and one-half thereof is owned by persons favoring the course of the other trustees or directors, the trustees or directors or the stockholders or one or more of them may present a petition as prescribed in the last section. And it shall be the duty of a majority of the directors or trustees of every corporation created by or under the laws of this State to present a petition as



prescribed in the last section whenever directed so to do by a majority in interest of its stockholders. But this section does not apply to a savings bank, a trust company, a safe deposit company, or a corporation formed to rent safes in burglar and fire-proof vaults, or for the construction or operation of a railroad, or for aiding in the construction thereof, or for carrying on the business of banking or insurance, or intended to derive a profit from the loan or use of money. (Amended by ch. 569 of 1896. In effect September 1, 1896.)

If a petitioner in a proceeding under this section for a voluntary dissolution of a corporation having an even number of trustees equally divided respecting its management, neglects or refuses, after a referee has been appointed, to apply for a final order as contemplated by section 2428, the court may, on special application of any person interested, direct the petitioner to move, so that the interests of all may be protected. *Matter of Peekamose Fishing Club*, 151 N. Y. 511 (1897).

#### Contents of petition.

§ 2421. The petition must show that the case is one of those specified in the last two sections, and must state the reasons, which induce the petitioner or petitioners to desire the dissolution of the corporation. A schedule must be annexed to the petition, containing the following matters, as far as the petitioner or petitioners know, or have the means of knowing the same:

1. A full and true account of all the creditors of the corporation, and of all unsatisfied engagements, entered into by, and subsisting against, the corporation.

2. A statement of the name and place of residence of each creditor, and of each person with whom such an engagement was made, and to whom it is to be performed, if known; or, if either is not known, a statement of that fact.

3. A statement of the sum owing to each creditor, or other person specified in the last subdivision, and the nature of each debt, demand or other engagement.

4. A statement of the true cause and consideration of the indebtedness to each creditor.

5. A full, just, and true inventory of all the property of the corporation, and of all the books, vouchers, and securities, relating thereto.

6. A statement of each incumbrance upon the property of the corporation, by judgment, mortgage, pledge, or otherwise.

7. A full, just, and true account of the capital stock of the corporation, specifying the name of each stockholder; his residence, if it is known, or if it is not known, stating that fact; the number of shares belonging to him; the amount paid in upon his shares; and the amount still due thereupon.

The petition must state facts showing that the dissolution of a corporation will be beneficial to

the interests of the stockholders, and it is not enough to allege that the parties differ as to the management of the affairs of the corporation. *Matter of Pyrolusite Manganese Co.*, 29 Hun, 429 (1883).

The statute should be fully complied with and the petition should contain a full and complete inventory of the property. *Matter of Application of Dubois*, 15 How. Pr. 7.

A technical or accidental omission in the inventory, or some other omission to comply with this section, which does not show a lack of good faith or afford evidence of a fraudulent purpose, may be obviated by evidence. *In re Santa Eulalia Mfg. Co.*, 115 N. Y. 657; *Matter of Murray Hill Bank*, 9 App. Div. 546.

Where the petition for a voluntary dissolution, made by the directors, annexes a schedule, as required by Code Civ. Pro., § 2421, which shows a surplus of assets, a temporary receiver should not be appointed nor an injunction against creditors issued, and upon a hearing to vacate such appointment had four months later, it is not competent to show by the affidavits of the directors that the surplus in the schedule was erroneous and the corporation now insolvent, for the amendment of the schedule authorized by section 2427, is for the insertion of additional items and fuller particulars. *Matter of Hitchcock Mfg. Co.*, 1 App. Div. 164; 73 N. Y. St. Rep. 46 (1896).

#### Affidavit to be annexed.

§ 2422. An affidavit, made by each of the petitioners, to the effect that the matters of fact, stated in the petition and the schedule, are just and true, so far as the affiant knows or has the means of knowing the same, must be annexed to the petition and schedule.

#### Presentation of petition, etc. Order to show cause.

§ 2423. The papers must be presented at a special term of the supreme court, held within the judicial district, embracing the county wherein the principal office of the corporation is located. In a case specified in section two thousand four hundred and twenty of this act the court may in its discretion entertain or dismiss the application. Where it entertains the application, or where the cause is one of those specified in section two thousand four hundred and nineteen of this act, the court must make an order, requiring all persons interested in the corporation to show cause before it, or before a referee designated in the order, at a time and place therein specified, not less than three months after the granting of the order, why the corporation should not be dissolved. The order must be entered, and the papers must be filed, within ten days after the order is made, with the clerk of the county where the principal office of the corporation is located. If it shall be made to appear to the satisfaction of the court that the corporation is insolvent, the court,



may at any stage of the proceedings before the final order, on motion of the petitioners on notice to the attorney-general, or on motion of the attorney-general on notice to the corporation, appoint a temporary receiver of the property of the corporation, which receiver shall have all the powers and be subject to all the duties that are defined as belonging to temporary receivers appointed in an action, in section one thousand seven hundred and eighty-eight of this act. The court may also, in its discretion, at any stage in the proceeding, after such appointment, upon like motion and notice, confer upon such temporary receiver the powers and authority, and subject him to the duties and liabilities of a permanent receiver, or as much thereof as it thinks proper, except that he shall not make any final distribution among the creditors and stockholders, before final order in the proceedings, unless he is specially directed so to do by the court. If such receiver be appointed, the court may, in its discretion, on like motion and notice, with or without security, at any stage of the proceeding before the final order, grant an injunction, restraining the creditors of the corporation from beginning any action against the said corporation for the recovery of a sum of money, or from taking any further proceedings in such an action theretofore commenced. Such injunction shall have the same effect and be subject to the same provisions of law as if each creditor upon whom it is served was named therein. (Amended by ch. 946 of 1895. In effect January 1, 1896.)

For powers of temporary receiver appointed under this section, see §§ 1788-89, Code Civ. Pro., as annotated under subject of "Receivers."

The order must comply strictly with the statute, being in the nature of a process. Accordingly held, that where the order did not, the provisions requiring the persons interested to show cause why the prayer of the petitioner should not be granted, nor direct that a copy of the petition should be served with the order, the order was void and the court did not acquire complete jurisdiction of the proceedings. *People v. Seneca Lake G. & W. Co.*, 52 Hun, 174.

An order entitled "In the matter of the application of the directors of the Christian Jensen Co., Limited, for the voluntary dissolution," reciting that the corporation was insolvent, and requiring the persons interested to show cause "why the prayer of the petition should not be granted," substantially complies with section 2423 and is sufficient, although served without a copy of the petition. *Matter of Christian Jensen Co.*, 128 N. Y. 550 (1891); 40 N. Y. St. Rep. 621; 28 N. E. Rep. 665.

An omission to serve an order to show cause, required by this section, can be taken advantage of at any time by a party that has waived proper service of the order on himself. *Matter of Pyro-lusite Manganese Co.*, 29 Hun, 429 (1883).

In a special proceeding for the voluntary dissolution of a banking corporation under section 2419, where an order is granted requiring the attorney-general to show cause why a temporary receiver should not be appointed, as prescribed in section 2423, it is no answer to the application that the State superintendent of banks has taken possession of the property under Laws of 1892, chapter 689, which authorizes such action on his part, and provides that he may retain possession till the termination of the proceedings instituted by the attorney-general. *Matter of Murray Hill Bank*, 9 App. Div. 546 (1896).

An injunction restraining the creditors of a corporation from proceeding against it, cannot be granted at the same time as the order to show cause. *Matter of French Mfg. Co.*, 12 Hun, 488.

A court cannot restrain the creditors from proceeding against the corporation until a receiver has been appointed. *Matter of Trustees of Simmonds Soap Co.*, 41 N. Y. St. Rep. 355.

The proceeding for the voluntary dissolution of a corporation is a purely statutory one, and the authority to enjoin creditors, and which is derived from section 2423, which provides for restraining creditors from beginning or prosecuting an action for a sum of money only, does not confer power to restrain the prosecution of other suits. *Matter of Hamilton Park Co.*, 1 App. Div. 375; 72 N. Y. St. Rep. 581 (1896).

Where a creditor has levied under an execution upon the property of a corporation, after a petition has been filed for its voluntary dissolution, but before the appointment of a receiver, the creditor may hold the property as against the receiver. *Matter of Dissolution of Meuhlfeld & Haynes Piano Co.*, 12 App. Div. 492.

The title of a temporary receiver appointed in a proceeding for the voluntary dissolution of a corporation relates back to the time when the order was granted upon his subsequently filing his bond, and he has a right to the interest of corporate property that has been seized in judicial proceedings against the corporation by a creditor, subsequent to the granting of the order to show cause, but before its service upon the creditor. *Matter of Christian Jensen Co.*, 128 N. Y. 550 (1891); 40 N. Y. St. Rep. 621; 28 N. E. Rep. 665.

In proceedings for voluntary dissolution, the court acquires jurisdiction by the presentation of a proper petition. If, therefore, an order to show cause issued upon such a petition, by which a temporary receiver is appointed, is in some respect informal and imperfect, it will be sufficient to pass the title of the corporate property to the receiver, so as to enable the court to prevent subsequent interference with it. *Id.*

An order appointing a receiver vests him with the title to the property of the corporation in a proceeding for the voluntary dissolution of a corporation, and the court may by order restrain proceedings to reach the property intermediate his appointment and qualification, even though such proceedings are taken in the Federal Courts. *Matter of Schuyler's Steam Tow Boat Co.*, 136 N. Y. 169; 32 N. E. Rep. 623; 48 N. Y. St. Rep. 830 (1892).

## Actions — Code, §§ 2424-2428.

**Order to be published.**

§ 2424. A copy of the order must be published, as prescribed therein, at least once in each of the three weeks immediately preceding the time fixed therein for showing cause, in the newspaper printed at Albany, in which legal notices are required to be published; and also in one or more newspapers, specified in the order, published in the city or county wherein the order is entered.

Executive L., § 73, provides for the designation of a "State paper," which is substituted for the paper referred to in the above section.

The order to show cause in a proceeding for voluntary dissolution is effective if it does not contain a direction in accordance with section 2424, requiring the order to be published and specifying the newspaper, and such defect does not render the appointment of a temporary receiver void and may be remedied by amendment. *Matter of Christian Jensen Co.*, 128 N. Y. 550 (1891); 40 N. Y. St. Rep. 621; 28 N. E. Rep. 665.

**Id.; to be served on creditors and stockholders.**

§ 2425. A copy of the order must also be served upon each of the persons specified in the schedule as a creditor or stockholder of the corporation, or as a person to whom an engagement of the corporation is to be performed, other than a person whose residence is stated to be unknown, or to be without the United States. The service must be made either personally, at least twenty days before the time appointed for the hearing; or by depositing a copy of the order, at least forty days before the time so appointed, in the post-office, inclosed in a postpaid wrapper, addressed to the person to be served, at his residence, as stated in the schedule.

**Hearing.**

§ 2426. At the time and place specified in the order, or at the time and place to which the hearing is adjourned, the court or the referee, must hear the allegations and proofs of the parties, and determine the facts. If a referee was not designated in the order to show cause, the court may, in its discretion, appoint a referee when or after the order is returnable. The decision of the court, or the report of the referee, must be in writing, and must be made and filed with all convenient speed. It must contain a statement of the effects, credits, and other property, and of the debts and other engagements, of the corporation, and of all other matters pertaining to its affairs.

A referee cannot be appointed as of course in an action to dissolve a corporation, not brought by the attorney-general. The appointment of a

referee, not designated by the court, is a nullity, under Code of Civil Procedure, section 1012. *Fallon v. Egberts' Woolen Mill Co.*, 24 Misc. Rep. 304.

The requirement of this section, as to the contents of the referee's report, is one of substance. A failure to comply with it renders the final order void. *Matter of E. M. Boynton Saw & File Co.*, 34 Hun, 369 (1885).

**Id.; original papers may be used.**

§ 2427. The court or the referee is entitled to use, upon the hearing, the original petition, and the schedules annexed thereto; and the clerk must transmit them accordingly, upon the written order of the judge or of the referee. In that case, they must be returned with the decision or report. The court may, at any stage of the proceedings before final order, on the application of the petitioners, or a majority of them, or on the application of the temporary receiver, grant an order amending the schedules annexed to the original petition, by the insertion of additional items, or by making the statements or inventory fuller and in greater detail than as originally filed, with the like effect as though said petition and schedules had been originally presented and filed as amended. (Amended by ch. 258 of 1894. Took effect April 4, 1894.)

**Application for final order.**

§ 2428. Where the hearing is before a referee, a motion for a final order must be made to the court, upon notice to each person who has made himself a party to the proceedings, by filing with the clerk, before the close of the hearing, a notice of his appearance, in person or by attorney, specifying a post-office within the State, where such a notice may be served. The notice may be served as prescribed in this act for the service of a paper upon an attorney in an action. Where the hearing was before the court, a motion for a final order may be made immediately, or at such a time and upon such a notice as the court prescribes.

When the petitioner, in a proceeding for the dissolution of a corporation, under section 2420, has filed a referee's report, but does not apply for a final order, and all the parties appear before the court on an order obtained by one of them requiring the petitioner and the other parties to show cause why a final hearing should not be had and the proceeding dismissed and a dissolution denied, the court acquires jurisdiction on notice to the attorney-general to make a final order dissolving the corporation, on the default, on an adjourned day, by the party who moved for a denial of dissolution, where the circumstances show that the motion was, in effect, and in the contemplation of the parties, an application for a final hearing of the proceeding upon the merits. *Matter of Peekamoose Fishing Club*, 151 N. Y. 511 (1897).

**Final order.**

§ 2429. Upon an application for a final order, if it appears to the court, in a case specified in section 2419 of this act, that the corporation is insolvent, or in a case specified either in that section, or in section 2420 of this act, that, for any reason, a dissolution of the corporation will be beneficial to the interests of the stockholders not injurious to the public interests, the court must make a final order, dissolving the corporation, and appointing one or more receivers of its property. Upon the entry of the order the corporation is dissolved. The court may, in its discretion, appoint a director, trustee, or other officer, or a stockholder of the corporation, a receiver of its property. In a proceeding for the voluntary dissolution of a corporation the court may, in the furtherance of justice, upon notice to the attorney-general, and the attorney-general not objecting, and upon such further notice to creditors or others interested as the court shall direct, which notice may be made by mail upon all persons and corporations not residing or existing within the State, relieve a receiver from any omission, defect or default, in any proceeding or act required by law to be taken or done, or in the giving of any notice required by law to be given, and the court may upon like notice, confirm any act of a receiver, and any decision, report, order or judgment made in such proceeding. (Amended by ch. 175 of 1895. In effect September 1, 1895.)

For powers of receiver, see "Receivers."

The attorney-general must be given notice of an application made under section 2429, for the voluntary dissolution of a corporation, whether the corporation is solvent or insolvent, and the court may vacate an order to show cause why the corporation should not be dissolved, granted without such notice. *Matter of Broadway Ins. Co.*, 23 App. Div. 283.

A dissolution of a corporation does not terminate a lease entered into by it. *People v. National Trust Co.*, 82 N. Y. 283.

The life of a corporation voluntarily dissolved continues until the final decree of its dissolution. *Drew v. Longwell*, 81 Hun, 144; 62 N. Y. St. Rep. 697 (1894).

The appointment of a receiver by final judgment supersedes all other actions taken for the preservation of the property, including the appointment of a temporary receiver. *Glines v. Binghamton Trust Co.*, 68 Hun, 511; 52 N. Y. St. Rep. 593 (1893).

**Certain sales, etc., void.**

§ 2430. A sale, assignment, mortgage conveyance, or other transfer, of any property

of a corporation, made after the filing of a petition as prescribed in this title, in payment of, or as security for, an existing or prior debt, or for any other consideration; or a judgment thereafter rendered against the corporation by confession, or upon the acceptance of an offer, is absolutely void, as against the receiver appointed in the special proceeding, and as against the creditors of the corporation.

Where a just debt exists against an insolvent corporation, against which an action is brought, the fact that the corporation fails to defend is not alone sufficient to justify the inference that the judgment was offered with intent to give a preference, and a judgment so entered is not invalid under this section. *Matter of Dissolution of Meuhlfeld & Haynes Piano Co.*, 12 App. Div. 492.

**Certain corporations excepted from this title.**

§ 2431. This title does not apply to an incorporated library society, to a religious corporation, or to a select school or academy, incorporated by the regents of the university or by the legislature, or to a municipal or other political corporation. In the case of corporations affected by the provisions of this title and not having stockholders, it shall be sufficient for the purposes of this title to notify, name and refer to the "members" of such corporations instead of "stockholders" as herein provided. (Amended by ch. 406 of 1884.)

**IX. Winding up Acts, Held Unconstitutional.**

(L. 1886, ch. 310.)

AN ACT to provide for the winding up of corporations which have been annulled and dissolved by legislative enactment.

(L. 1886, ch. 271.)

AN ACT in relation to the consents of property owners, order of the general term confirming reports of commissioners and the consents of the local authorities heretofore given to the construction and operation of street surface railroads by companies which have been dissolved or annulled, or whose charter may have been repealed by legislative enactment.

The two foregoing laws, of 1886, are omitted, having been held unconstitutional. See *People v. O'Brien*, 111 N. Y. 1, 66.



## PART X.

## RECEIVERS OF CORPORATIONS.

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## I. When Receiver Can be Appointed.

(Code of Civil Procedure.)

## 1. Of a domestic corporation.

§ 1810. A receiver of the property of a corporation can be appointed only by the court, and in one of the following cases:

1. An action, brought as prescribed in article second, third, or fourth of this title.

a. An action under section 1781 by the attorney-general, a creditor or an officer of the corporation against the directors or other officers for certain misconduct. In such an action a preliminary injunction and the appointment of a receiver are proper where a director makes a prima facie

case in an action against a codirector for restitution or violation of his trust. *Piza v. Butler*, 90 Hun, 254; 70 N. Y. St. Rep. 501 (1895). It is not necessary to continue a receivership after offending directors have retired. *Halpin v. Mutual Brewing Co.*, 91 Hun, 220; 72 N. Y. St. Rep. 52 (1895). The receiver in such an action has not the statutory powers which are conferred upon a receiver appointed in an action to sequester the property of a corporation, or for its dissolution or the annulment of its charter, which are the same as those conferred on a receiver in a proceeding for voluntary dissolution. His powers and duties for the most part are governed by the rules of law applicable to common-law receivers appointed by courts of equity.

b. An action under section 1784 by a judgment creditor to sequester the property of a corporation. The appointment of a receiver in such an action is also authorized by sections 1788, 1793, and a permanent receiver has all the power and authority and is subject to all the duties of a receiver appointed in a proceeding for voluntary dissolution. *Hubbell v. Syracuse Iron Co.*, 42 Hun, 182 (1886). A receiver may be appointed in such an action although another receiver has been previously appointed by another court, where the last order contains a provision that nothing therein contained shall affect the rights and powers of the receiver first appointed. *Thau v. Bankers & Merchants' Tel. Co.*, 56 Super. Ct. 588 (1888).

c. An action under sections 1785, 1786 by the people, a creditor or stockholder to dissolve the corporation. The appointment of a receiver in such an action is also authorized by sections 1788, 1793, and a permanent receiver has all the power and is subject to all the duties of a receiver appointed in a proceeding for voluntary dissolution. A receiver will not be appointed where the plaintiffs do not show themselves entitled to have a dissolution of the corporation. *Denike v. N. Y. & R. L. Co.*, 80 N. Y. 599 (1880). The appointment of a receiver in an action by the people to dissolve a corporation does not prevent the court from permitting a foreclosure action and the appointment of a receiver therein to supersede the former. *Herring v. N. Y., L. E. & W. R. R. Co.*, 105 N. Y. 340 (1887).

d. An action under sections 1801, 1798 to procure a judgment vacating the charter or annulling the existence of a corporation. The appointment of a receiver in such action is also authorized by section 1801, and a permanent receiver has, it seems, all the power and is subject to all the duties of a receiver appointed in a proceeding for voluntary dissolution; at least such seems to be the effect of the language of section 1801.

2. An action brought for the foreclosure of a mortgage upon the property, of which the receiver is appointed, where the mortgage debt, or the interest thereupon, has remained unpaid, at least thirty days after it was payable, and after payment thereof was duly demanded of the proper officer of the corporation; and where either the income

of the property is specifically mortgaged, or the property itself is probably insufficient to pay the mortgage debt.

A receiver appointed under this subdivision is not expressly given any powers by statute, as in the case of a receiver appointed in an action to dissolve a corporation, but his powers and duties are to be governed by the order appointing him, or the instructions of the court, or the general principles of law governing the conduct of receivers appointed by a court of equity by virtue of its powers as such.

A receiver in foreclosure of a corporate mortgage, although the mortgage covers all the property and franchises, is a common-law receiver. *U. S. Trust Co. v. N. Y., W. S., etc., R. R. Co.*, 101 N. Y. 478, 483; 5 N. E. Rep. 316.

Although a receiver has been appointed in an action to foreclose a junior mortgage, this does not preclude the appointment of a receiver in an action to foreclose the first mortgage, though money collected on the former should not be required to be paid over by him until the right has been judicially determined. *Holland Trust Co. v. Consolidated Gas & Electric Light Co.*, 85 Hun, 454; 66 N. Y. St. Rep. 291 (1895).

3. An action brought by the attorney-general, or by a stockholder, to preserve the assets of a corporation, having no officer empowered to hold the same.

See note to last subdivision.

4. A special proceeding for the voluntary dissolution of a corporation.

The appointment of a receiver in such a proceeding is also authorized by section 2429. The powers and duties of such receiver are prescribed by various statutes, post.

Where the receiver is appointed in an action, otherwise than by or pursuant to a final judgment, notice of the application for his appointment, must be given to the proper officer of the corporation.

Mr. Abbott, in a note on Statutory Receivers, 19 Abb. N. C. 364, suggests that section 1810 being a mere revision of L. 1870, ch. 151, § 2, probably does not preclude the appointment of statutory receivers in any case expressly or impliedly authorized by any statute passed since the act of 1870.

## 2. Of property of foreign corporation.

Section 1812, Code Civil Procedure, provides that section 1810 shall apply to an action or a special proceeding, against a corporation, or joint-stock association created by or under the laws of the State, or a trustee, director, or other officer thereof; or against a corporation, or joint-stock association created by or under the laws of another State, government, or country, or a

trustee, director, or other officer thereof, where the corporation or association does business within the State, or has, within the State, a business agency or a fiscal agency, or an agency for the transfer of its stock.

A receiver of an insolvent foreign corporation may be appointed by the courts of this State for the purpose of preserving its assets for the protection of domestic creditors, where such corporation has assets in this State, but no officers empowered to hold them. *Hall v. Holland House Co.*, 12 Misc. Rep. 55; 66 N. Y. St. Rep. 684 (1895); *Woerishoffer v. North River Const. Co.*, 6 Civ. Pro. Rep. 113; *Dreyfuss v. Seale*, 18 Misc. Rep. 550 (1896).

An auxiliary receiver of a foreign corporation, the affairs of which are in liquidation in another State, is merely the custodian of the assets in this State for the purpose of protecting the creditors here, and has only the powers conferred by the order appointing him. *Buckley v. Harrison*, 10 Misc. Rep. 683; 65 N. Y. St. Rep. 93 (1895).

## II. Notice of Application.

(Code Civ. Pro., § 714.)

### 1. Temporary receiver.

§ 714. (Amended by ch. 416 of 1877 and by ch. 542 of 1879.) Notice of an application, for the appointment of a receiver, in an action, before judgment therein, must be given to the adverse party, unless he has failed to appear in the action, and the time limited for his appearance has expired. But where an order has been made, as prescribed in section 438 of this act, the court may, in its discretion, appoint a temporary receiver, to receive and preserve the property, without notice, or upon a notice given by publication or otherwise, as it thinks proper.

### 2. Permanent receiver.

Code of Civil Procedure, section 1810, provides that when a receiver is appointed in an action, otherwise than by or pursuant to a final judgment, notice of the application for his appointment, must be given to the proper officer of the corporation.

As to when notice of the application must be served on attorney-general, see "Service of Papers on Attorney-General," post. A general judgment creditor of a corporation is not entitled to notice of a motion for the appointment of a receiver. *Morrison v. Menhaden Co.*, 37 Hun, 522.

## III. Application, Where Made.

(L. 1883, ch. 378.)

Section 1. Every application hereafter made for the appointment of a receiver of a corporation, other than applications made

by the attorney-general on behalf of the people of the State, shall be made at a special term of the supreme court, held in and for the judicial district in which the principal business office of the corporation is located; and all such applications made by the attorney-general shall be made in the judicial district in which the action in which the appointment is sought is triable; and any action or proceeding hereafter brought by the attorney-general on behalf of the people of the State against any corporation for the purpose of procuring its dissolution, the appointment of a receiver, or the sequestration of its property, may be brought in any county of the State, to be designated by the attorney-general. (Thus amended by L. 1896, ch. 282.)

§ 9. All applications to the court, contemplated by this act, shall be made in the judicial district where the principal office of the corporation against which proceedings are taken is located, excepting such applications as are made in actions brought by the attorney-general on behalf of the people of the State, and all such applications shall be made in the judicial district in which the action is triable. (Thus amended by L. 1896, ch. 282.)

Laws of 1883, chapter 378, is constitutional. *Matter of Stonebridge*, 37 N. Y. St. Rep. 617 (1891); aff'd, 128 N. Y. 618.

This act relates exclusively to receivers of corporations, appointed in proceedings in insolvency. Accordingly the provisions of the first section relating to the place of application does not apply to an action to foreclose a corporate mortgage. *Whitney v. N. Y. & Atlantic R. R. Co.*, 32 Hun, 164 (1884); *United States Trust Co. v. N. Y., W. S. & B. R. R. Co.*, 101 N. Y. 478 (1886); aff'd 35 Hun, 341 (1885). Such a receiver, it was held in the latter case, is not a statutory receiver, but is appointed by virtue of the general equity jurisdiction of the court. The amendment to section 1, made by the act of 1896, authorizing the attorney-general to apply for the appointment of a receiver in any county, does not seem to affect this decision.

In order to sustain jurisdiction in an action by a receiver where his appointment is denied in the answer, it is necessary that the court obtained jurisdiction, as provided by L. 1883, ch. 378, § 1, and that an action was commenced in which he was appointed. *Springs v. Bowery National Bank*, 63 Hun, 505; 45 N. Y. St. Rep. 327 (1892).

On application for the appointment of a receiver facts peculiarly in the knowledge of the creditor, although alleged on information and belief, are to be taken as true, if not denied. *Holland Trust Co. v. Consolidated Gas & Electric Light Co.*, 85 Hun, 454; 66 N. Y. St. Rep. 291 (1895).

It is contrary to the orderly and regular proceedings in a court of justice to allow a stranger to participate in a motion for the appointment of a receiver. *O'Mahoney v. Belmont*, 62 N. Y. 133.



**IV. Who May be Appointed Receiver.**

(R. S., pt. 3, ch. 8, tit. 4, § 66.)

§ 66. Any of the directors, trustees or other officers of such corporation, or any of its stockholders, may be appointed receivers, who, before entering upon the duties of their appointment, shall give such security to the people of this State, and in such penalty, as the court shall direct, conditioned for the faithful discharge of the duties of their appointment, and for the due accounting for all the moneys received by them.

This section is applicable to the appointment of receivers in proceedings for the voluntary dissolution of a corporation. See *Matter of Eagle Iron Works*, 8 Paige, 385. Code Civ. Pro., § 2429, is to same effect as to who may be appointed in a proceeding for voluntary dissolution. There seems to be no other statutory provision on the subject. An officer of an insolvent corporation (except as above provided in a proceeding for its voluntary dissolution) is not a proper person to be appointed receiver. *Attorney-General v. Bank of Columbia*, 1 Paige, 510; *aff'd*, 3 Wend. 588. A person will not be appointed who stands in any improper relation to the cause. *Smith v. N. Y. Consol. Stage Co.*, 28 How. Pr. 208; but there is no rule of law which prevents the appointment of a creditor, *Chamberlain v. Greenleaf*, 4 Abb. N. C. 92; or a general agent of an insurance company, *Hanover Fire Ins. Co. v. Germania Fire Ins. Co.*, 33 Hun, 539; a director who has participated in the alleged mismanagement should not be appointed, *Keeler v. Brooklyn El. R. R. Co.*, 9 Abb. N. C. 166; nor an assignee of the same estate, especially where a contest is likely to result, *Eichberg v. Wickham*, 21 N. Y. Supp. 647 (1892); *People's Bank of East Orange v. Fancher*, 21 N. Y. Supp. 525 (1892); nor a person who has signed or verified a false statement as to the solvency of the corporation. *People v. Third Ave. Savings Bank*, 50 How. 22.

The propriety of appointing the same person as a receiver in an action to foreclose a mortgage against a corporation, and also in an action by the attorney-general for its dissolution is exclusively a question for the court. *Herring v. N. Y., Lake Erie, etc., R. R. Co.*, 63 How. Pr. 497 (1882).

Code Civ. Pro., § 90, provides that no person holding the office of clerk, deputy clerk, special deputy clerk, or assistant in the clerk's office of a court of record within the county of New York shall be appointed a receiver, except by the written consent of all the parties to the action, or special proceeding other than the parties in default for failure to appear or plead. Code Civ. Pro., § 827, authorizes the court to appoint a referee to inquire into the propriety of appointing a certain person as receiver.

**V. Bond of Receiver.**

(Code Civ. Pro., § 715.)

§ 715. A receiver, appointed in an action or special proceeding, must, before entering

upon his duties, execute and file with the proper clerk, a bond to the people, with at least two sufficient sureties, in a penalty fixed by the court, judge, or referee, making the appointment, conditioned for the faithful discharge of his duties as receiver; and the execution of any such bond by any fidelity or surety company authorized by the laws of this State to transact business, shall be equivalent to the execution of said bond by two sureties. And the court, or, where the order was made out of court, the judge making the order, by or pursuant to which the receiver was appointed, or his successor in office, may, at any time remove the receiver, or direct him to give a new bond, with new sureties, with the like conditions. But the foregoing provisions of this section do not apply to a case where special provision is made by law, for the security to be given by a receiver, or for increasing the same, or for removing a receiver. A receiver who, having executed and filed a bond as provided for in this section, before presenting his accounts as receiver, must give notice to the surety or sureties on his official bond, of his intention to present his accounts, not less than eight days before the day set for the hearing on said accounting. The same notice must be given to such surety or sureties where the accounting is ordered on the petition of a person or persons other than the receiver, and in no case shall the receiver's accounts be passed, settled or allowed, unless the said notice provided for in this section shall have first been given to the surety or sureties on the official bond of such receiver. (Amended by ch. 94 of 1896. In effect March 11, 1896.)

Proof of filing his bond is essential to the maintenance of an action by a receiver, the order for whose appointment makes his bond a condition for his taking the property. *Hegewisch v. Silver*, 50 N. Y. St. Rep. 448 (1892).

An action will not lie under a receiver's bond until his accounts have been duly settled so as to determine the amount of his liability and to whom it extends. *French v. Dauchy*, 57 Hun, 100; 32 N. Y. St. Rep. 544 (1890).

Where a receiver has been required, by the order appointing him, to file a bond, and he continued to act as receiver for a year before resigning, it will be presumed that his bond was duly filed. *Hegewisch v. Silver*, 140 N. Y. 414; 35 N. E. Rep. 658; 55 N. Y. St. Rep. 808 (1893). Query, whether defendant in action brought by receiver can raise such question. *Id.*

A temporary receiver of a corporation who has filed his bond is under no obligation to give additional security on being continued as a permanent receiver unless required to do so by the court. *Jones v. Blun*, 145 N. Y. 333; 39 N. E. Rep. 954; 64 N. Y. St. Rep. 806.

An order requiring a bond with one surety is not void, but may be amended without prejudice. *Holmes v. McDowell*, 15 Hun, 585; *aff'd*,

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76 N. Y. 596; but where the order requires two sureties it must be executed by at least two. *Johnson v. Martin*, 1 Th. & C. 504.

## VI. Expenses of Bond.

(Code Civ. Pro., § 3320, last sentence.)

§ 3320 (last sentence). Any receiver, assignee, guardian, trustee, committee, executor, or administrator, required by law to give a bond as such, may include as a part of his lawful expenses such reasonable sum, not exceeding one per centum per annum upon the amount of such bond, paid his sureties thereon, as such court or judge allows. (Amended by ch. 465 of 1892.)

## VII. Action on Bond.

(Code Civ. Pro., §§ 1888, 1890.)

§ 1888. Where a public officer is required to give an official bond to the people, and special provision is not made by law, for the prosecution of the bond, by or for the benefit of a person, who has sustained, by his default, delinquency, or misconduct, an injury, for which the sureties upon the bond are liable, such a person may apply for leave to prosecute the delinquent's official bond.

§ 1890. A receiver, an assignee of an insolvent debtor, or a trustee or other officer, appointed by a court or a judge, is a public officer, within the meaning of the last section but one; but where he was appointed by or pursuant to the order of a court, or in a special proceeding specified in title twelfth of chapter seventeenth of this act, the application for leave to prosecute his official bond must be made to the court by which, or pursuant to whose order, he was appointed, or in which the judgment was rendered, as the case may be. An action, brought as prescribed in this section, must be brought in the court to which application is made for leave to bring it.

## VIII. Powers of a Temporary Receiver.

(Code Civ. Pro., §§ 1788, 1789.)

§ 1788. In such an action, the court may also, at any stage thereof, appoint one or more receivers of the property of the corporation. A receiver, so appointed, before final judgment, is a temporary receiver. until final judgment is entered. A temporary receiver has power to collect and receive the debts, demands and other property of the corporation; to preserve the property, and proceeds of the debts and demands collected; to sell or otherwise dispose of the property as directed by the court; to collect, receive and preserve the proceeds thereof; and to maintain any action or special proceeding, for either of those purposes. He must qualify as prescribed by law for the qualification of a

permanent receiver. Unless additional powers are specially conferred upon him, as prescribed in the next section, a temporary receiver has only the powers specified in this section, and those which are incidental to the exercise thereof, a receiver appointed by or pursuant to a final judgment in the action, or a temporary receiver who is continued by the final judgment, is a permanent receiver, and has all the powers and authority conferred, and is subject to all the duties and liabilities imposed upon a receiver appointed\* the voluntary dissolution of a corporation. (Amended by ch. 399 of 1882. See § 2.)

This section authorizes the appointment of a temporary receiver in an action to sequester the property of a corporation brought under section 1784, and an action for the dissolution of a corporation brought by the attorney-general, or by a creditor or stockholder under sections 1785, 1786. The powers conferred by this section upon a temporary receiver are by section 2423 conferred upon a temporary receiver in a proceeding for the voluntary dissolution of a corporation. A temporary receiver cannot be appointed in an action by the people to annul the charter of a corporation. For general principles governing the conduct of all receivers, temporary as well as permanent, commissions and compensation, see post.

It was held that a temporary receiver appointed before the passage of the Code of Civil Procedure in the people's action to dissolve a corporation as insolvent is not thereby vested with the title to corporate property, nor is he a trustee for his creditors, but is a mere caretaker, custodian and manager, under the direction of the court, during the pendency of the action. If a trustee in any sense he is a trustee for the corporation. *Herring v. N. Y. & Lake Erie, etc., R. R. Co.*, 105 N. Y. 340; 12 N. E. Rep. 763 (1887). It is the evident policy of the statute to vest in the temporary receiver many of the important powers that are exercised by a permanent receiver, and this for the very obvious reason that before final judgment, in an action to procure the dissolution of the corporation, it is of vital importance that the title to the corporate property should be vested in an officer of the court who has full authority to reduce it to possession wherever found, and to maintain any action or special proceeding necessary in the premises. *Nealis v. American Tube & Iron Co.*, 150 N. Y. 42; 44 N. E. Rep. 944 (1896). A temporary receiver, therefore, is vested with the title of the property, for the purposes of his trust. *Matter of Smith Co.*, 31 App. Div. 39 (1898). For the purpose of holding, protecting and reducing the property to possession he represents the corporation and its creditors as fully as a permanent receiver. Id.; see cases cited under "Powers of Permanent Receivers," post. Accordingly he may maintain an action against a creditor of a corporation to recover back moneys collected under a judgment against the corporation entered upon an offer made in contemplation

\* So in the original.

of its insolvency, and the corporation itself is not a necessary party to such an action. *Nealis v. American Tube & Iron Co.*, supra. He may sue to set aside a transfer by the corporation as fraudulent. *Stiefel v. N. Y. Novelty Co.*, 14 App. Div. 371 (1897).

He has no authority as such to continue the business of the concern and, unless he is authorized to do so by the court, the estate cannot be charged with liability incurred by him in the business. *Appleton v. Welsh*, 20 Misc. Rep. 343 (1897). Where he is not directed to sell the property or to continue a business he is not authorized to employ a truckman at a weekly salary, so as to charge any party but himself. *Meyer v. Lexow*, 1 App. Div. 116; 72 N. Y. St. Rep. 220 (1896).

The requirements of §§ 70, 72, of tit. 4, ch. 8, pt. 3, of the R. S., that receivers of corporations shall give notice, as is required of trustees of insolvent debtors, and that those indebted to the corporation shall account to the receivers, do not apply to the case of a temporary receiver. *Nealls v. American Tube & Iron Co.*, 76 Hun, 220; 59 N. Y. St. Rep. 120 (1894); aff'd, 150 N. Y. 42; 44 N. E. Rep. 954.

An order appointing a temporary receiver of a corporation in a proceeding for voluntary dissolution does not disable it from moving to vacate an attachment. *Waverly Co. v. Worthington Co.*, 4 Misc. Rep. 447; 53 N. Y. St. Rep. 520 (1893).

§ 1789. A temporary receiver, appointed as prescribed in the last section, is, in all respects, subject to the control of the court. In addition to the powers conferred upon him, by the provisions of the last section, the court may, by the order or interlocutory judgment appointing him, or by an order subsequently made in the action, or by the final judgment, confer upon him, the powers and authority, and subject him to the duties and liabilities, of a permanent receiver, or so much thereof as it thinks proper; except that he shall not make any distribution among the creditors or stockholders, before final judgment, unless he is specially directed so to do by the court.

#### IX. Powers and Duties of Permanent Receivers.

Revised Statutes, pt. 3, ch. 8, tit. 4, §§ 67 to 89, inclusive, prescribe the general powers and duties of a receiver in a proceeding for the voluntary dissolution of a corporation. Section 1788 of the Code provides that a permanent receiver appointed in an action by a creditor to sequester assets, or in an action by the people or by a creditor or stockholder to dissolve a corporation has all the power and authority conferred and is subject to all the duties and liabilities imposed upon a receiver appointed on a voluntary dissolution of a corporation. Section 1801 of the Code provides that in an action by the people to vacate the charter or annul the existence of a corporation, the final judgment must provide for the appointment of a receiver, the taking of an account, and the distribution of the property of

the corporation among its creditors and stockholders, as where the corporation is dissolved upon its voluntary application. It will thus be observed that the provisions relating to receivers in proceedings for voluntary dissolution apply to nearly all if not all permanent statutory receivers of corporations, appointed under general laws. A receiver not subject to the provisions applicable to receivers in proceedings for voluntary dissolution is a common-law receiver, and except as subject to special statutes, has the powers and duties of receivers at common law, as evolved and declared by courts of equity. Apart, however, from statutory powers and duties, many general equitable principles are applicable to statutory receivers, and should govern them in the performance of their duties. The decisions relating to the powers and duties of receivers generally as trustees of the corporation and its creditors are arranged for convenience under the sections of the Revised Statutes, declaring similar statutory powers and duties. Following the Revised Statutes are supplemental laws relating to this subject.

#### Rights and authority.

§ 67. Such receivers shall be vested with all the estate, real and personal, of such corporation, from the time of their having filed the security hereinbefore required, and shall be trustees of such estate for the benefit of the creditors of such corporation and of its stockholders.

##### a. Title.

A receiver is vested absolutely with all the property, assets and effects for distribution. *Atty-Gen. v. Guardian Life Ins. Co.*, 77 N. Y. 272 (1879); *Chapman v. Douglass*, 5 Daly, 244.

Presumptively the receiver is in possession of premises which are the subject of the receivership from the time he files his bond. *Wells v. Higgins*, 132 N. Y. 459; 30 N. E. Rep. 861; 44 N. Y. St. Rep. 608 (1892); *Chamberlain v. Rochester S. P. Co.*, 7 Hun, 557; and his title does not relate back so as to divest the lien of an execution levied intermediate his appointment and qualification. *Matter of Lewis & Fowler Mfg. Co.*, 89 Hun, 208; 69 N. Y. St. Rep. 44. This is undoubtedly the rule, although in some cases the question of the date of filing security was not raised and the courts have declared that the receiver's title dates from his appointment.

Upon the order of appointment, a receiver becomes vested with the assets, and no superior lien is acquired by a creditor levying an attachment between the time of such appointment and his taking possession. *Dickey v. Bates*, 13 Misc. Rep. 489 (1895).

The title of a receiver appointed in an action for the dissolution of a corporation is subordinate to that of an assignee to the property of the corporation theretofore appointed. The title of the assignee to the property being apparently valid, the remedy of the receiver, if he desires to assail it, is by an action. *People v. U. S. Law Blank & Stationery Co.*, 24 Misc. Rep. 535.



## Receivers; general powers — R. S., § 68.

A permanent receiver is vested with only such property as the corporation had at the time of dissolution, and takes no title to property theretofore disposed of by judicial determination. *Herring v. N. Y., Lake Erie, etc., R. R. Co.*, 105 N. Y. 340 (1887); *Dunlap v. Patterson Fire Ins. Co.*, 12 Hun, 627; *aff'd*, 74 N. Y. 145; nor does his title divest a lien obtained by levy under execution. *Clark v. Brockway*, 3 Keyes, 13.

The title of a receiver is superior to the lien of a judgment obtained against the corporation subsequent to his appointment. *Atty.-Gen. v. Atlantic Mutual Life Ins. Co.*, 100 N. Y. 279.

As against the lien of a judgment creditor of a corporation who has issued execution under which a levy has been made, the right of a receiver dates only from his appointment, and not from the filing of the petition for voluntary dissolution of the corporation. *Matter of Meuhlfeld v. Haynes Plano Co.*, 12 App. Div. 492 (1896).

**b. Represents creditors and stockholders.**

A receiver represents both the creditors and the stockholders, and in his character as trustee for the latter he may maintain an action to set aside illegal and fraudulent transfers of property made by its officers or to recover funds misapplied. *Atty.-Gen. v. Guardian Mut. Life Ins. Co.*, 77 N. Y. 272; *Talmage v. Pell*, 7 id. 328.

A receiver of a corporation represents both it and its creditors. *Van Cott v. Van Brunt*, 2 Abb. N. C. 283; reversed on other grounds, 82 N. Y. 535; *Attorney-General v. North Am. Life Ins. Co.*, 1d. 172; *People ex rel. Atty.-Gen. v. Security Life Ins., etc., Co.*, 79 id. 267.

A receiver of a corporation is a trustee of bona fide creditors only. *McParland v. Bain*, 26 Hun, 38.

A receiver merely as such may not disaffirm acts of the corporation or of its directors, if it does not appear that it is insolvent, or has creditors to be protected. *Foraker v. Brown*, 10 Misc. Rep. 161; 62 N. Y. St. Rep. 480 (1894).

**c. Assets, what are.**

The receiver of an insolvent bank receives its assets subject to the same equities and impressed with the same trust under which they were held by it. *People v. Bank of Dansville*, 39 Hun, 187.

The balance of unpaid stock subscription passes to the receiver. *Dean v. Biggs*, 25 Hun, 122.

A patent right owned by the corporation vests in the receiver. *Matter of Woven Tape Skirt Co.*, 12 Hun, 111.

In a proceeding for the voluntary dissolution of a corporation the court has not power to take from a trustee a fund placed in his hands for distribution by the corporation and transfer the same to the receiver for distribution. *Matter of Home Provident Safety Fund Association*, 129 N. Y. 288; 41 N. Y. St. Rep. 549 (1891).

The court cannot by summary order compel a delivery to a receiver of a railroad company of books which have been sold to and are in the possession of its successor. *Olmstead v. Rochester etc., R. R. Co.*, 46 Hun, 552 (1887).

The court will not order an assignee of a corporation to turn over its assets to a receiver in a proceeding for the voluntary dissolution of the corporation, subsequently appointed, but will leave him to his remedy by action. *Matter of Meuhlfeld*, 16 App. Div. 401 (1897).

Where the vice-president of a corporation presides at a meeting of the directors which voted him a salary, and it was shown there was no business which would justify him in receiving such salary, held, that a receiver was entitled to recover such amount. *Ashley v. Kinnan*, 18 N. Y. St. Rep. 791 (1888).

**d. Court may protect assets.**

A court which has in the exercise of its rightful jurisdiction appointed a receiver, can make an order forbidding any after interference by way of levy or seizure, with the property in his possession. *Woerishoffer v. North River Construction Co.*, 99 N. Y. 398 (1885).

**General powers.**

§ 68. Such receivers shall have all the power and authority conferred by law upon trustees to whom an assignment of the estate of insolvent debtors may be made, pursuant to the provisions of the fifth chapter of the second part of the Revised Statutes.

**a. Powers of trustees of insolvent debtors generally.**

(R. S., pt. 2, ch. 5, tit. 1.)

§ 4. The survivor or survivors of any trustees shall have all the powers and rights given by this title to trustees. All property in the hands of any trustee at the time of his death, removal or incapacity, shall be delivered to the remaining trustee or trustees, if there be any, or to the successor of the one so dying, removed or incapacitated, who may demand and sue for the same.

§ 5. Before proceeding to the discharge of any of their duties, all such trustees shall take and subscribe an oath, that they will well and truly execute the trust by their appointment reposed in them, according to the best of their skill and understanding, which oath shall be filed with the officer or court that appointed them.

§ 7. The said trustees shall have power,

1. To sue in their own names or otherwise, and recover all the estate, debts and things in action, belonging or due to such debtor, in the same manner and with the like effect as such debtor might or could have done if no attachment had been issued, or trustees appointed, or an assignment had not been made; and no set-off shall be allowed in any such suit, for any debt, unless it was owing to such creditor, by such debtor, before the first publication of the notice required in the first article,

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2. To take into their hands, all the estate of such debtor, whether attached, or delivered to them, or afterwards discovered; and all books, vouchers and securities relating to the same:

3. In the case of a non-resident, absconding or concealed debtor, to demand and receive of every sheriff who shall have attached any of the property of such debtor, or who shall have in his hands, any moneys arising from the sale of such property, all such property and moneys, on paying him his reasonable costs and charges, for attaching and keeping the same, to be allowed by the officer having jurisdiction:

4. From time to time, to sell at public auction, all the estate, real and personal, vested in them, which shall come to their hands, after giving at least fourteen days' public notice of the time and place of sale, and also publishing the same for two weeks in a newspaper, printed in the county, where the sale shall be made, if there be one:

5. To allow such credit on the sale of real property by them, as they shall deem reasonable, not exceeding eighteen months, for not more than three-fourths of the purchase money; which credit shall be secured by a bond of the purchaser, and a mortgage on the property sold:

6. On such sales, to execute the necessary conveyances and bills of sale:

7. To redeem all mortgages and conditional contracts and all pledges of personal property, and to satisfy any judgments, which may be an incumbrance on any property so sold by them; or to sell such property subject to such mortgages, contracts, pledges or judgments:

8. To settle all matters and accounts between such debtor, and his debtors, or creditors, and to examine any person touching such matters and accounts, on oath, to be administered by either of them:

9. Under the order of the officer appointing them, to compound with any person indebted to such debtor, and thereupon to discharge all demands against such person.

#### b. Management of estate.

Duties of receiver in management and collection of estate. See *Clapp v. Clapp*, 49 Hun, 195.

A receiver may at any time apply to the court for instructions touching his duties. *People v. Sec. Life Ins. Co.*, 79 N. Y. 267.

The receiver is an officer of the court appointing him and is bound to obey its direction and is subject in the general discharge of his duties to its control. *Syracuse Savings Bank v. S. C. & N. Y. R. R. Co.*, 88 N. Y. 110.

In the management of the estate a receiver is chargeable with the value of the property which by reasonable diligence would have come into his hands and has been lost by his omission to act. *Clapp v. Clapp*, 49 Hun, 195.

A receiver should not invest the moneys in his hands without the direction of the court. *Att'y-Gen. v. N. A. Life Ins. Co.*, 89 N. Y. 94.

He may sell and dispose of all the property and effects of the corporation, *Verplanck v. Mercantile Ins. Co.*, 2 Paige, 438; but where receiver fraudulently obtains order for sale of a debt due the corporation, a creditor may have the order vacated and the sale set aside. *Hackley v. Draper*, 60 Hun, 88.

A receiver of an insolvent corporation is not bound to complete its contracts. *Matter of A. E. Chasmar & Co.*, 22 Misc. Rep. 680 (1898).

Counsel who unsuccessfully defend a suit for the dissolution of a corporation, the insolvency of which is known to its officers, cannot have their bill for services preferred by the receiver. *People v. Commercial Alliance Life Ins. Co.*, 148 N. Y. 563; 42 N. E. Rep. 707 (1896).

The power of the court to direct its receiver to pay over moneys which he has received which equitably belong to another, must be exercised in an application made in the proceeding in which the receiver was appointed and in the same judicial district and upon notice to the attorney-general. *Gillig v. Treadwell*, 151 N. Y. 552; 45 N. E. Rep. 1035 (1897).

#### c. Debts for preservation.

A receiver may incur expenses and charges for the preservation of the property in his hands. *Rogers v. Wendell*, 54 Hun, 540; 28 N. Y. St. Rep. 301.

The fact that a corporation at the time of the appointment of a receiver in an action for its dissolution is in serious financial embarrassment, without means to pay for work and material used in improving its property, or to continue the work, does not justify an order of court authorizing the receiver to issue certificates for its debts for work and labor, which shall be a lien upon the property prior to the lien of a mortgage given before such indebtedness was incurred. Such claim cannot be preferred as debts incurred for the benefit and protection of the property. *Roht v. Attrill*, 106 N. Y. 423; 13 N. E. Rep. 282 (1887). Nor are such claims brought within the rule giving expenses incurred in the preservation of the property a first lien, by reason of the further facts that a large number of unpaid workmen who have continued work under promise of payment were in a state of destitution and threatened to burn the property unless they were paid. *Id.*

#### d. Debts in operating.

The receiver of a railroad corporation has no power without the order of the court to issue certificates and notes binding upon the trust, and the holder thereof, in order to enforce them, must show that the proceeds were used for the benefit of the estate. *Wesson v. Chapman*, 77 Hun, 144; 59 N. Y. St. Rep. 144 (1894).

A court of equity, having possession, in a foreclosure suit through its receiver, of the property of a railroad company, has authority to create debt for rolling stock and other purposes, when necessary to secure the successful operation of the road, and to charge the debts so created as a first lien. *Vilas v. Page*, 106 N. Y. 439; 13 N. E. Rep. 743 (1887).

The court cannot authorize the receiver of a railroad corporation to issue certificates of indebtedness for the payment of labor and services in operating the road prior to his appointment, and to make such certificates a lien prior to existing mortgages. *Metropolitan Trust Co. v. Tona-wanda Valley, etc., R. R. Co.*, 103 N. Y. 245; 8 N. E. Rep. 488 (1886).

#### e. Court may adopt agreement.

Where an agreement made by a receiver is one which the court would have made and inures to the benefit of the company, although made without the permission of the court, the court will enforce it. *People v. National Mutual Ins. Co.*, 19 App. Div. 247 (1897).

#### f. Deposit of money.

Where a receiver deposits money in a bank exercising the prudence of a business man, he should not suffer loss by reason of the subsequent failure of such bank. *Brett v. Brett*, 4 N. Y. St. Rep. 704. See, also, "Place of Deposit of Funds," post.

#### g. Not to purchase for self.

A receiver cannot be permitted to purchase for his own benefit. *Sheldon v. Saenz*, 59 How. Pr. 377.

#### h. Must keep funds distinct.

A receiver should keep the funds of his trust distinct from his private funds. *Matter of Commonwealth Fire Ins. Co.* 32 Hun, 78 (1884).

#### i. Settlement of claims.

The method prescribed by the statute for ascertaining the claims of creditors in proceedings for the voluntary dissolution of a corporation are not exclusive and the court may, when in its judgment it is proper to do so, authorize an action to be brought against the receiver who disputes the validity of a claim so that the matter may be more deliberately examined and determined. *Ludington v. Thompson*, 153 N. Y. 499; 47 N. E. Rep. 903 (1897).

It seems that an order of the court is not necessary in order that a receiver may have authority to settle and compromise a claim; it is simply a protection to him against a charge that he has exercised his discretionary power unwisely in so doing. *Higgins v. Herrmann*, 23 App. Div. 420.

A receiver who has paid out the funds in his hands, in obedience to orders of the court, cannot be compelled to make restitution upon it being determined that the parties receiving the same were not entitled thereto. *Willis v. Sharp*, 124 N. Y. 406; 26 N. E. Rep. 974; 36 N. Y. St. Rep. 417 (1891).

Where a receiver has paid a claim on the decision of the Special Term that it was preferred but which was afterward held by the Court of Appeals not to be preferred, the amount should be deducted in a settlement with the general creditors. *People v. E. Remington & Son*, 60 Hun, 42; 38 N. Y. St. Rep. 565 (1891).

Although the time to prove debts against the estate of an insolvent corporation in the hands of a receiver had expired, a creditor was held to be entitled to the same pro rata dividend as the other creditors, so far as the assets remaining undistributed would allow. *People v. E. Remington & Sons*, 59 Hun, 282; 36 N. Y. St. Rep. 282; aff'd, 126 N. Y. 654 (1891).

An application by a creditor to compel the payment of its claim by a receiver of a corporation will be denied where, pending the application, the receiver has been finally discharged and all of the property taken out of his hands, although such discharge was granted without notice to the creditor. The sole remedy of the creditor is to apply to the court to vacate its order so that his right as a creditor may be protected. *N. Y. & Western Union Tel. Co. v. Jewett*, 115 N. Y. 166; 21 N. E. Rep. 1036; 24 N. Y. St. Rep. 560 (1889).

A creditor is entitled to interest on a dividend during the time which its payment to him was deferred by reason of the receiver's unsuccessfully contesting his claim. *People v. E. Remington & Sons*, 59 Hun, 307; 36 N. Y. St. Rep. 377; aff'd, 126 N. Y. 679; 27 N. E. Rep. 853 (1891).

A receiver of property acting in good faith under the orders of the court is protected against the claim of a general creditor who has acquired no lien but who has unreasonably delayed taking any steps or giving any notice of an intention of asserting an interest in the property. *Sullivan v. Miller*, 106 N. Y. 635; 13 N. E. Rep. 772 (1887).

A receiver who is ordered to pay money to a designated person cannot withhold it because he has a personal claim against such person. *McGerry v. Smith*, 2 Law Bull. 7.

The court may at any time make an order for either the partial or total disbursement of the funds of an insolvent corporation in the hands of a receiver among the persons who appear to be equitably entitled thereto. *Woodruff v. Erie Ry. Co.*, 93 N. Y. 609; rev'g 25 Hun, 246 (1883).

#### j. Specific performance.

A sale made by a receiver of a State bank, upon order of the court of a judgment, may be enforced by order compelling the specific performance of the contract. *Matter of Denison*, 114 N. Y. 621 (1889).

#### k. Liability for taxes.

The receiver of an insolvent corporation who is using its franchise may be compelled to pay taxes by summary order upon petition. *Central Trust Co. v. N. Y. City, etc., R. R. Co.*, 110 N. Y. 250; 18 N. E. Rep. 92; rev'g 47 Hun, 587 (1888).

Where a receiver has been appointed for a corporation, city or State taxes due from it must be paid before the claims of general creditors. *Matter of Atlas Iron Construction Co.*, 19 App. Div. 415 (1897).

A receiver may by order be compelled to pay from funds in his hands a franchise tax due to the State. *Central Trust Co. v. N. Y. C. & H. R. R. Co.*, 110 N. Y. 250; 18 N. E. Rep. 92.



**l. Liability for negligence.**

A receiver of a railroad corporation who operates and controls it incurs the same liability for injuries to his employees as a corporation would have done. *Graham v. Chapman*, 33 N. Y. St. Rep. 349 (1890).

As to liability of receiver in action for negligence causing death of a passenger, see *Cardot v. Barney*, 63 N. Y. 281.

**m. Liability to employees.**

One employed by a receiver in matters pertaining to the execution of the trust may look to the receiver in his individual capacity for his compensation. *Ryan v. Rand*, 20 Abb. N. C. 313 (1887).

A person employed to render service in caring for the trust property, furnishing materials and looking after it generally, is entitled to recovery for his services and disbursements from the receiver personally, there being no agreement to the contrary. *Rogers v. Wendell*, 54 Hun, 540; 28 N. Y. St. Rep. 301 (1889).

**n. Liability for acts of employees.**

A receiver is personally liable for loss or injury through his own neglect or misconduct, but for the loss or misconduct of those employed by him he is only liable as receiver. *Camp v. Barney*, 4 Hun, 373.

**o. Liability for judgment against lessor.**

A receiver of the lessee of a railroad corporation may be required to comply with a judgment against the lessor corporation to construct a farm crossing, even though he alleges that he has no funds to comply with the judgment. *Peckham v. Dutchess Co. R. R. Co.*, 145 N. Y. 385; 40 N. E. Rep. 15; 64 N. Y. St. Rep. 831 (1895).

**p. Liability for judgment against corporation.**

The receiver of a dissolved corporation is not bound by a judgment rendered after its dissolution in a proceeding against it to which he was not a party. *People v. Knickerbocker Life Ins. Co.*, 106 N. Y. 619; 13 N. E. Rep. 447; rev'g 43 Hun, 574 (1887).

**q. Employment of attorney.**

He may have attorney of party, except where interests conflict. *Smith v. N. Y. Central Stage Co.*, 28 How. 208; *Bennett v. Chapin*, 3 Sandf. 673; *Ryckman v. Parkins*, 5 Paige, 543; *Warren v. Sprague*, 4 Edw. 416; aff'd, 11 Paige, 200; *Hynes v. McDermott*, 3 N. Y. St. Rep. 582; but a stranger, who is sued by the receiver, cannot raise the objection. *Warren v. Sprague*, supra; *Bennett v. Chapin*, supra.

A receiver will not be authorized by the court to bring an action by a particular attorney. *First National Bank v. Navarro*, 43 N. Y. St. Rep. 813 (1892).

In employing counsel the receiver should not employ an attorney identified with the legal business of either party, although it may be excused where the employment was in good faith. *Clapp v. Clapp*, 49 Hun, 195 (1888).

**r. Actions by and against receivers.**

Code Civ. Pro., § 383, provides that an action against a receiver in a special proceeding instituted in a court or before a judge, brought to recover a chattel, or damages for taking, detaining or injuring personal property by the defendant, or the person whom he represents, must be brought within three years from the time the cause of action accrues.

Code Civ. Pro., § 766, provides that an action or special proceeding brought by a receiver does not abate on his death or removal, but may be continued by his successors.

Code Civ. Pro., § 791, subd. 5, prefers actions and special proceedings in which a receiver is sole plaintiff or defendant.

A receiver can neither sue or be sued without leave of the court. *James v. James Cement Co.*, 8 N. Y. St. Rep. 490; *Foster v. Townshend*, 68 N. Y. 203; *Merritt v. Lyon*, 16 Wend. 405; *Smith v. Woodruff*, 6 Abb. 65.

Leave to sue a receiver can be granted at any stage of the action; the irregularity in suing without leave is waived by an appearance without objection. *Hubbell v. Dana*, 9 How. 424.

As a general rule, leave will not be granted by a court to sue a receiver appointed by its authority in any other tribunal. 41 Super. Ct. 513.

Where a receiver is sued personally and desires the protection of the court, he must apply for an injunction, and if he fails to do so, the action at law will proceed as though permission to bring it has been received from the court. *Camp v. Barney*, 4 Hun, 373.

It is a contempt to bring an action against a receiver without leave of the court. *Taylor v. Baldwin*, 14 Abb. 166; *De Groot v. Jay*, 30 Barb. 483.

The commencement of an action against a receiver without leave does not prevent the court having jurisdiction, and the remedy is by stay or proceeding for contempt or both. *Hirshfeld v. Kalischer*, 81 Hun, 606; 63 N. Y. St. Rep. 220 (1894).

Omission to obtain leave to sue a receiver is not jurisdictional, and if the contempt be not wilful the receiver's motion for relief may be met by granting leave *nunc pro tunc*, on terms which will indemnify the receiver. *James v. James Cement Co.*, 8 N. Y. St. Rep. 490.

A person suing a receiver should obtain leave of the court, but a judgment obtained is valid. *Hackley v. Draper*, 4 Sup. Ct. (Th. & C.) 614; aff'd, 60 N. Y. 88.

The receiver of a corporation possesses whatever rights the corporation possessed which are enforceable against its directors or trustees for misfeasance or non-feasance in office. *Mason v. Henry*, 152 N. Y. 529; 46 N. E. Rep. 837 (1897).

He can set aside judgment obtained by collusion, fraudulently and without consideration. *Whittlesey v. Delaney*, 73 N. Y. 571.

An action to recover an unpaid balance of a subscription to stock may be continued by a receiver subsequently appointed in the name of the original party. *Phoenix Warehousing Co. v.*

Badger, 67 N. Y. 294; Talmadge v. Pell, 9 Paige, 410.

He may maintain an action to determine the validity of bonds secured by mortgage of its property, and to what extent they are liens thereon. Hubbell v. Syracuse Iron Works, 42 Hun, 182.

He may sue a director at law for damages resulting from his misapplication of the assets of the company or he may proceed in equity to compel an accounting as to the property wasted and lost. Mason v. Henry, 152 N. Y. 529; 46 N. E. Rep. 837 (1897).

He may sue for funds misappropriated and set aside illegal or fraudulent transfers. Atty.-Gen. v. Guardian Life Ins. Co., 77 N. Y. 272.

He may repudiate illegally executed contracts of the corporation and reclaim the property, Talmadge v. Pell, 7 N. Y. 328; but cannot impeach its lawful acts. Hyde v. Lynde, 4 N. Y. 387.

He may recover dividends wrongfully paid and make creditors defendants. Osgood v. Laytin, 3 Keyes, 521.

He may offset claims. Holbrook v. Receivers of Am. Fire Ins. Co., 6 Paige, 220; Osgood v. De Groot, 36 N. Y. 348; Matter of Van Allen, 37 Barb. 225.

While, as a general rule, the receiver takes the title of a corporation, and any defense that would have been made against the corporation may be asserted against him, yet where there are innocent creditors, he may, on their behalf, maintain an action upon an illegal contract of the corporation, although the latter is precluded from maintaining the same. Pittsburgh Carbon Co. v. McMillin, 119 N. Y. 46; 23 N. E. Rep. 530; 28 N. Y. St. Rep. 807 (1890).

Upon proceeding for a voluntary dissolution, the receiver has the power to contest the validity of bonds and mortgages, subject to which a sale of the property of the corporation is sought. Matter of Wendler Machine Co., 2 App. Div. 16; 72 N. Y. St. Rep. 499 (1896).

As against a wrongdoer, the possession of the receiver is sufficient to maintain an action for the recovery of damages sustained by him by reason of a trespass. Farnsworth v. Western Union Tel. Co., 6 N. Y. Supp. (1889).

A receiver appointed here of a domestic corporation cannot sue here to recover property of the corporation situated in another State. Simpkins v. Smith & Parmelee Gold Co., 50 How. Pr. 56.

A receiver who is warranted in bringing an action to set aside a chattel mortgage made by the judgment debtor, though unsuccessful, is entitled to be allowed the expenses and costs incurred by him. Matter of Merry, 11 App. Div. 597 (1896).

Where the receiver of an insolvent corporation refused to receive goods sold to him and the seller resold them on his account and brought an action by leave of the court to recover the difference in price, held, that he was guilty of contempt in reselling the goods without leave of the court, and the recovery should be set aside. Moore v. Potter, 87 Hun, 334; 68 N. Y. St. Rep. 60 (1895).

#### s. Actions which cannot be maintained.

A receiver cannot enforce a liability of stockholders which is possessed by a particular class of creditors only. Farnsworth v. Wood, 91 N. Y. 308.

A receiver cannot bring an action against one who was formerly a stockholder to collect the amount unpaid on the shares sold and transferred by him unless the corporation could have maintained such action prior to his appointment. Billings v. Robinson, 28 Hun, 122; aff'd, 94 N. Y. 415; Billings v. Trask, 80 Hun, 314.

A receiver of a corporation cannot question the validity of a transfer made before his appointment except in action brought for such purpose in which the transferee is a party. Prentice v. Nichols, 100 N. Y. 227 (1885).

#### t. Actions against corporations during receivership.

An action may be maintained against the corporation upon a contract made by it, notwithstanding the appointment of a receiver in another action for its dissolution. Pringle v. Woolworth, 90 N. Y. 502 (1882).

The receiver of a corporation appointed pending an action for the foreclosure of a mortgage upon all its property does not represent the corporation or supersede it in the exercise of its powers, except in relation to the possession and management of the property committed to his charge, and notwithstanding his appointment the corporation still exists, may sue and be sued, and is liable for its acts and upon its contracts and covenants the same as if the receiver had not been appointed. Decker v. Gardner, 124 N. Y. 334; 26 N. E. Rep. 814; 36 N. Y. St. Rep. 267 (1891).

The appointment of a receiver of a corporation does not preclude the officers from continuing the defense of an action against it, and the receivers have no standing before they are made parties to move to set aside the answer served and the judgment entered in the action. Farmers' Loan & Trust Co. v. Hoffman House, 7 Misc. Rep. 353; 58 N. Y. St. Rep. 684 (1894).

It seems that the above cases were decided in reference to temporary receivers only; not permanent receivers appointed by final order.

Though the appointment of a receiver is erroneous, a creditor obtaining judgment against the corporation acquires no lien on its assets superior to other creditors, although the receiver is superseded by another receiver appointed in an action by the attorney-general to dissolve the corporation. Atty.-Gen. v. Continental Life Ins. Co., 28 Hun, 360 (1882).

#### u. Accounting.

Upon the settlement of a receiver's accounts, the validity of his appointment is not before the court as an original question. Hardt v. Levy, 20 App. Div. 400 (1897).

Upon the accounting of a receiver of a corporation, where the order for the accounting requires service of notice upon the creditors named in the application, such creditors have a right to appear

and be present at the accounting. *Greason v. Goodewille-Wyman Co.*, 38 Hun, 138 (1885).

Where a receiver has not had any of the property of the corporation in his possession, a proceeding for an accounting merely cannot be maintained against him. *Lyons v. Atlantic Hills Gold Mining, etc., Co.*, 38 N. Y. St. Rep. 892 (1892).

A de facto receiver cannot avail himself of a void appointment to escape an accounting. *O'Mahoney v. Belmont*, 62 N. Y. 133.

#### v. Discharge.

Where no property of the corporation ever came into the hands of its receiver, and the order appointing him had been vacated, held, that he was entitled to his discharge. *People v. Bushwick Chemical Co.*, 45 N. Y. St. Rep. 329; aff'd, 133 N. Y. 694; 31 N. E. Rep. 627 (1892).

#### w. Removal.

A court may remove its receiver on its own motion. *Hoyt v. Continental Ins. Co.*, 21 Week. Dig. 145 (1885).

Upon a motion to vacate the order appointing a receiver, on the ground that a receiver has already been appointed by a competent tribunal, it is error for the court on denying such motion to remove the second receiver and appoint another, on ground other than those on which the motion to vacate the order are based, no notice of such motion to remove having been given to the superseded receiver. *Bruns v. Stewart Mfg. Co.*, 31 Hun, 195 (1883).

#### x. Foreign receivers.

A foreign receiver can maintain an action in this State where there are no local interests adverse to his suing as such receiver. *Dyer v. Power*, 39 N. Y. St. Rep. 136 (1891).

The receiver of a national bank of another State appointed by the comptroller of the currency is not to be regarded as a foreign receiver in the original acceptance of that term, and he may bring an action in the courts of this State to recover the amount of an assessment upon shareholders. *Peters v. Foster*, 56 Hun, 607; 32 N. Y. St. Rep. 174 (1890).

The receiver of a foreign corporation represents the corporation. He is the trustee of and represents the creditors and all other persons interested in the fund, including the policyholders, and is the proper one to distribute the assets as directed by the court. *Farmers' Loan & Trust Co. v. Aberle*, 19 App. Div. 79 (1897).

#### To recover subscriptions.

§ 69. If there shall be a sum remaining due upon any share of stock subscribed in such corporation, the receivers shall immediately proceed and recover the same, unless the person so indebted shall be wholly insolvent; and for that purpose may file their bill in the court of chancery, or may commence and prosecute an action at law, for the recovery of such sum, without the

consent of any of the creditors of such corporation.

See note on general powers under § 68, ante.

#### Notice of appointment.

§ 70. The receivers, immediately on their appointment, shall give notice thereof, which shall contain the same matters required by law in notices of trustees of insolvent debtors; and in addition thereto, shall require all persons holding any open or subsisting contract of such corporation, to present the same in writing and in detail to such receivers, at the time and place in such notice specified; which shall be published for three weeks in the State paper and in a newspaper printed in the county where the principal place of conducting the business of such corporation shall have been situated.

The provision relating to notice of insolvent debtors referred to is as follows:

(R. S., pt. 2, ch. 5, tit. 1.)

§ 8. The trustees, immediately upon their appointment, shall give notice thereof; and therein shall require,

1. All persons indebted to such debtor, by a day and at a place therein to be specified, to render an account of all debts and sums of money owing by them respectively, to such trustees, and to pay the same;

2. All persons having in their possession any property or effects of such debtor, to deliver the same to the said trustees by the day so appointed;

3. All the creditors of such debtor to deliver their respective accounts and demands to the trustees or one of them, by a day to be therein specified, not less than forty days from the first publication of such notice.

§ 10. Notwithstanding any such notice, the trustees may sue for and recover, any property or effects of the debtor, and any debts due to him, at any time, before the day appointed for the delivery or payment thereof.

#### Certain acts of corporation after appointment, void.

§ 71. All sales, assignments, transfers, mortgages and conveyances of any part of the estate, real or personal, including things in action, of every such corporation, made after the filing of the petition for a dissolution thereof, in payment of, or as a security for, any existing or prior debt, or for any other consideration, and all judgments confessed by such corporation after that time, shall be absolutely void as against the receivers who may be appointed on such petition, and as against the creditors of such corporation.

See note on general powers under § 68, ante.



**Debtors to account.**

§ 72. After the first publication of the notice of the appointment of receivers, every person having possession of any property belonging to such corporation, and every person indebted to such corporation, shall account and answer for the amount of such debt and for the value of such property to the said receivers; and all the provisions of law, in respect to trustees of insolvent debtors, the collection and preservation of the property of such debtors, the concealment and discovery thereof, and the means of enforcing such discovery, shall be applicable to the receivers so appointed, and to the property of such corporation.

The provisions relating to trustees of insolvent debtors referred to are as follows:

(R. S., pt. 2, ch. 5, tit. 1.)

§ 11. Every person indebted to such debtor, or having the possession or custody of any property or thing in action, belonging to him, who shall conceal the same, and not deliver a just and true account of such indebtedness, or not deliver such property or thing in action, to the trustees or one of them, by the day for that purpose appointed, shall forfeit double the amount of such debt, or double the value of such property so concealed; which penalties may be recovered by the trustees.

§ 12. Whenever the trustees shall show by their own oath or other competent proof, to the satisfaction of any officer named in the first section of the seventh article of this title, or of any judge of a county court, that there is good reason to believe that the debtor, his wife, or any other person has concealed or embezzled any part of the estate of such debtor vested in the said trustees; or that any person can testify concerning the concealment or embezzlement thereof; or that any person who shall not have rendered an account as above required, is indebted to such debtor, or has property in his custody or possession, belonging to such debtor; such officer or judge shall issue a warrant, commanding any sheriff or constable to cause such debtor, his wife, or other person, to be brought before him at such time and place as he shall appoint, for the purpose of being examined.

§ 13. The officer issuing such warrant, shall examine every person so brought before him, on oath, in the presence of the trustees or any of them, touching all matters relative to the debtor, his dealings and estate, and touching the detention or concealment of any part of his property, and touching the indebtedness of any person to such debtor; and shall reduce the examination to writing; which the person so examined is hereby required to sign, and which shall be attested by the officer.

§ 14. If any person so brought before such officer shall refuse to be sworn, or to answer

satisfactorily, all lawful questions put to him, or shall refuse to sign the examination, not having a reasonable objection thereto, to be allowed by such officer, the said officer shall by warrant commit such person to prison, there to remain without bail, until he shall submit to be sworn or to answer as required, or to sign such examination; in which warrant the particular default of the person committed shall be specified; and if it be, in not answering any question, such question shall also be specified therein.

§ 15. If any person so committed shall bring a writ of habeas corpus he shall not be discharged by reason of any insufficiency in the form of the warrant of commitment; but the court or officer before whom such person shall be brought, shall recommit such person, unless it shall be made to appear that he hath answered all lawful questions put to him, or had sufficient reason for refusing to sign the examination, as the case may be; or unless such person shall then answer, on oath, the question so put to him.

§ 16. Any sheriff or jailor wilfully suffering any person so committed or recommitment, pursuant to the foregoing sections, to escape, shall be liable to indictment for a misdemeanor; and on conviction thereof, in addition to any other punishment the court may inflict, shall forfeit to the trustees a sum equal to the whole amount of debts due to the creditors of such debtor, not exceeding two thousand five hundred dollars.

§ 17. The person so examined, and answering to the satisfaction of the officer, shall not be liable to any penalty imposed in this article for concealing and not delivering any property, or paying any debt; but his answers on such examination, may be given in evidence in the same manner, and with the like effect, as if they had been made in answer to a bill in equity filed by such trustees.

§ 18. Any person who shall discover to the trustees any secreted effects, property, or things in action, belonging to such debtor, so that they shall be recovered by them, shall be entitled to ten dollars on the hundred dollars, and at that rate, on the value of the effects so discovered, to be paid by the trustees, out of the estate of such debtor; but this section shall not extend to persons who have such property, effects or things, in their own possession.

**Reference of controversies.**

§ 73. Such receivers shall have the same power to settle any controversy that shall arise between them and any debtors or creditors of such corporation, by a reference, as is given by law to trustees of insolvent debtors; and the same proceedings for that purpose shall be had, and with the like effect; and application for the appointment of referees may be made to any officer au-

thorized to appoint such referees on the application of trustees of insolvent debtors, who shall proceed therein in the same manner; and the referees shall proceed in like manner, and file their report with the like effect in all respects.

See note under § 68, ante, for general powers.

The provisions relating to trustees of insolvent debtors referred to are as follows:

(R. S., pt. 2, ch. 5, tit. 1.)

§ 19. If any controversy shall arise between the trustees and any other person in the settlement of any demands against such debtor or of debts due his estate, the same may be referred to one or more indifferent persons, who may be agreed upon by the trustees and the party with whom such controversy shall exist, by a writing to that effect signed by them. (Thus amended by L. 1862, ch. 373.)

§ 20. If such referee or referees be not selected by agreement, then the trustees or the other party to the controversy may serve a notice of their intention to apply to the officer who appointed said trustees, or to any judge of the supreme court at chambers, residing in the same district with said trustees, for the appointment of one or more referees, specifying the time and place when such application will be made, which notice shall be served at least ten days before the time so therein specified. (Thus amended by L. 1862, ch. 373.)

§ 21. On the day so specified, upon due proof of the service of such notice, the officer before whom the application is made shall proceed to select one or more referees, the same in all respects as they are now selected, according to the rules and practice of the supreme court. (Thus amended by L. 1863, ch. 373.)

§ 22. When any witness to such controversy shall reside out of the county where the said trustees resided at the time of their appointment, the referee or referees appointed to hear said controversy shall have power to issue a commission or commissions in like manner as justices of the peace are now authorized to issue the same, and the testimony so taken shall be returned to said referee or referees in the same manner, and be read before them on a hearing, in like manner as testimony taken on commission before justices of the peace. (Thus amended by L. 1862, ch. 373.)

§ 23. The officer before whom they shall be selected, shall certify such selection in writing. Such certificate, or the written agreement of the parties, shall be filed by the trustees in the office of a clerk of the supreme court, when the trustees were appointed under the first article of this title; and in the said office, or in that of the clerk of the court of common pleas of the county, when the trustees were appointed under any other article of this title; and a rule shall

thereupon be entered by such clerk in vacation or in term, appointing the persons so selected to determine the controversy.

§ 24. Such referee shall have the same powers, and be subject to the like duties and obligations, and shall receive the same compensation, as referees appointed by the supreme court, in personal actions pending therein.

§ 25. The report of the referees shall be filed in the same office where the rule for their appointment was entered, and shall be conclusive on the rights of the parties, if not set aside by the court.

#### General meeting of creditors.

§ 74. The receivers shall be subject to all the duties and obligations by law imposed on trustees of insolvent debtors, so far as they may be applicable, except where other provisions shall be herein made. They shall call a general meeting of the creditors of such corporation, within four months from the time of their appointment, when all accounts and demands for and against such corporation, and all its open and subsisting contracts shall be ascertained and adjusted as far as may be, and the amount of moneys in the hands of the receivers declared.

See note under § 68, ante, for general powers.

The remaining powers of trustees of insolvent debtors are as follows:

(R. S., pt. 2, ch. 5, tit. 1.)

§ 26. The trustees shall, as speedily as possible, convert the estate, real and personal, of such debtor, into money. They shall keep a regular account of all moneys received by them as trustees; to which, every creditor, or other person interested therein, shall be at liberty, at all reasonable times, to have recourse.

§ 36. Where mutual credit has been given any debtor (except a debtor proceeding under the sixth article of this title) and any other person, or mutual debts have subsisted between such debtor and any other person, the trustees may set off such credits or debts, and pay the proportion or receive the balance due. But no set-off shall be allowed of any claim or debt, which would have not been entitled to a dividend, as hereinbefore directed.

§ 37. No set-off shall be allowed by such trustees, of any claim or debt, which shall have been purchased by, or transferred to, the person claiming its allowance, which could not have been set off by him, according to the provisions of this article, in a suit brought by such trustees.

#### Cancellation of existing contracts.

§ 75. If there shall be any open and subsisting engagements or contracts of such corpo-

ration, which are in the nature of insurances or contingent engagements of any kind, the receivers may with the consent of the party holding such engagement, cancel and discharge the same, by refunding to such party the premium or consideration paid thereon by such corporation, or so much thereof, as shall be in the same proportion to the time which shall remain of any risk assumed by such engagement, as the whole premium bore to the whole term of such risk; and upon such amount being paid by such receivers to the person holding or being the legal owner of such engagement, it shall be deemed canceled and discharged as against such receivers.

#### Compensation.

§ 76. Such receivers shall, in addition to their actual disbursements, be entitled to such commissions as the court shall allow, not exceeding the sum allowed by law to executors or administrators.

This section does not apply to temporary receiver. *Matter of Smith Co.*, 31 App. Div. 39 (1898). As to permanent receivers, it seems to be entirely superseded by later enactments. See "Compensation of Receivers," post.

#### To retain money to cancel existing engagements.

§ 77. The receivers shall retain out of the moneys in their hands, a sufficient amount to pay the sums, which they are hereinbefore authorized to pay, for the purpose of canceling and discharging any open or subsisting engagements.

#### To retain money to meet possible judgment.

§ 78. If any suit be pending against the corporation or against the receivers, for any demand, the receivers may retain the proportion which would belong to such demand if established, and the necessary costs and proceedings, in their hands, to be applied according to the event of such suit, or to be distributed in a second or other dividend.

#### Order of distribution.

§ 79. The receivers shall distribute the residue of the moneys in their hands, among all those who shall have exhibited their claims as creditors, and whose debts shall have been ascertained, as follows:

1. All debts entitled to a preference under the laws of the United States.

2. Judgments actually obtained against such corporation, to the extent of the value of the real estate on which they shall respectively be liens.

3. All other creditors of such corporation, in proportion to their respective demands, without giving any preference to debts due on specialities.

See note under § 68, ante.

Upon the application of a receiver of an insolvent corporation, the court may determine the classification of a claim under this section and enter an order accordingly. *Attorney-General v. Guardian, etc., Ins. Co.*, 5 N. Y. Supp. 84 (1889).

Under this section a judgment not entered until long after the appointment of a receiver, and where no real estate came into his possession, is not entitled to a preference. *Id.*

#### Second and final dividend.

§ 80. If the whole of the estate of such corporation be not distributed on the first dividend, the receivers shall, within one year thereafter, and within sixteen months after their appointment, make a second dividend of all the moneys in their hands, among the creditors entitled thereto; of which, and that the same will be a final dividend, three weeks' notice shall be inserted once in each week, in the State paper, and in a newspaper printed in the county where the principal place of business of such corporation was situated.

#### Proceedings thereon.

§ 81. Such second dividend shall be made in all respects in the same manner as herein prescribed, in relation to the first dividend, and no other shall be made thereafter among the creditors, of such corporation, except to the creditors having suits against it, or against the receivers, pending at the time of such second dividend, and except of the moneys which may be retained to pay such creditors, as herein provided; but every creditor who shall have neglected to exhibit his demand before the first dividend, and who shall deliver his account to the receivers before such second dividend, shall receive the sum he would have been entitled to on the first dividend, before any distribution be made to the other creditors.

#### Receiver not answerable for debts not exhibited.

§ 82. After such second dividend shall have been made, the receivers shall not be answerable to any creditor of such corporation, or to any person having claims against such corporation, by virtue of any open or subsisting engagement, unless the demands of such creditor shall have been exhibited, and the engagements upon which such claims are founded, shall have been presented to the said receivers, in detail and in writing, before or at the time specified by them in their notice of a second dividend.

#### Surplus to be distributed among stockholders.

§ 83. If after the second dividend is made, there shall remain any surplus in the hands of the receivers, they shall distribute the same among the stockholders of such corporation, in proportion to the respective



amounts paid in by them, severally, on their shares of stock.

#### Application of money retained to meet judgment.

§ 84. When any suit pending at the time of the second dividend, shall be terminated, they shall apply the moneys retained in their hands for that purpose, to the payment of the amount recovered, and their necessary charges and expenses; and if nothing shall have been recovered, they shall distribute such moneys, after deducting their expenses and costs, among the creditors and stockholders of the corporation, in the same manner as herein directed in respect to a second dividend.

#### Power of court over receivers.

§ 85. The receivers shall be subject to the control of the court of chancery, and may be compelled to account at any time; they may be removed by the court, and any vacancy created by such removal, by death or otherwise, may be supplied by the court.

See note under § 68, ante, for general principles governing this subject.

#### Accounting.

§ 86. Within three months after the time herein prescribed for making a second dividend, the receivers shall render a full and accurate account of all their proceedings to the court of chancery, on oath, which shall be referred to a master to examine and report thereon.

See note under § 68, ante; see also act requiring quarterly accounts of certain receivers, post.

#### Notice of accounting.

§ 87. Previous to rendering such account the receivers shall insert a notice of their intention to present the same, once in each week, for three weeks, in the State paper, and in a newspaper, of the county in which notices of dividends are herein required to be inserted, specifying the time and place at which such account will be rendered.

#### Reference of account.

§ 88. The master to whom such accounts shall be referred, shall hear and examine the proofs, vouchers and documents offered for or against such account, and shall report thereon fully to the court.

#### Settlement of account.

§ 89. Upon the coming in of such report, the court shall hear the allegations of all concerned therein, and shall allow or disallow such account, and decree the same to be final and conclusive upon all the credit-

ors of such corporation, upon all persons who have claims against it, upon any open or subsisting engagement, and upon all the stockholders of such corporation. Such receivers shall also account from time to time in the same manner, and with the like effect, for all moneys which shall come to their hands after the rendering of such account, and for all moneys which shall have been retained by them for any of the purposes hereinbefore specified, and shall pay into court all unclaimed dividends.

#### X. Certain Receivers May Hold Real Property.

(Code Civ. Pro., § 716.)

§ 716. A receiver, appointed by or pursuant to an order or a judgment, in an action in the supreme court, or a county court, or in a special proceeding or the voluntary dissolution of a corporation, may take and hold real property, upon such trusts and for such purposes as the court directs, subject to the direction of the court, from time to time, respecting the disposition thereof. (Amended by ch. 946 of 1895. In effect January 1, 1896.)

#### XI. Discovery of Assets.

(L. 1898, ch. 534.)

Section 1. Whenever any receiver of a domestic corporation, or of the property within this State of any foreign corporation, shall have been appointed and qualified, as provided in title two of chapter fifteen, or title eleven of chapter seventeen, of the Code of Civil Procedure, either before, upon, or after final judgment or order in the action or special proceeding in which such appointment was made, shall, by his own verified petition, affidavit or other competent proof, show to the supreme court, at a special term thereof, held within the judicial district wherein such appointment was made, that he has good reason to believe that any officer, stockholder, agent or employe of such corporation, or any other person whomsoever, has embezzled or concealed, or withholds or has in his possession or under his control, or has wrongfully disposed of, any property of such corporation which of right ought to be surrendered to the receiver thereof; or that any person can testify concerning the embezzlement, concealment, withholding, possession, control or wrongful disposition of any such property, the court shall make an order, with or without notice, commanding such person or persons to appear at a time and place to be designated in the order, before the court or before a referee named by the court for that purpose, and to submit to an examination concerning such embezzlement, concealment, withholding, possession, control or wrongful disposition of such property; and at the time of making such

order or at any time thereafter, the court may, in its discretion, enjoin and restrain the person or persons so ordered to appear and be examined from in any manner disposing of any property of such corporation which may be in the possession or under the control of the person so ordered to be examined, until the further order of the court in relation thereto. No person so ordered to appear and be examined shall be excused from answering any question on the ground that his answer might tend to convict him of a criminal offense; but his testimony taken upon such examination shall not be used against him in any criminal action or proceeding.

§ 2. Any person so ordered to appear and be examined shall be entitled to the same fees and mileage, to be paid at the time of serving the order, as are allowed by law to witnesses subpoenaed to attend and testify in an action in the supreme court, and shall be subject to the same penalties upon failure to appear and testify in obedience to such an order as are provided by law in the case of witnesses who fail to obey a subpoena to appear and testify in an action.

§ 3. Any person appearing for examination in obedience to such order shall be sworn by the court or referee to tell the truth, and shall be entitled to be represented on such examination by counsel, and may be cross-examined, or may make any voluntary statement in his own behalf concerning the subject of his examination which may seem to him desirable or pertinent thereto.

§ 4. The court before which such examination is taken, as well as the referee, if one be appointed for that purpose, shall have power to adjourn such examination from time to time, and may rule upon any question or objection arising in the course of such examination, to the same extent that might be done if the person so examined were testifying as a witness in the trial of an action.

§ 5. When the examination of any person under such order shall be concluded, the testimony shall be signed and sworn to by the person so examined, and shall be filed in the office of the clerk of the county where the action is pending, or was tried, in which the receiver was appointed; and if from such testimony it shall appear to the satisfaction of the court that any person so examined is wrongfully concealing or withholding, or has in his possession or under his control, any property which of right belongs to such receiver, the court may make an order commanding the person so examined forthwith to deliver the same to such receiver, who shall hold the same subject to the further order of the court in relation thereto; and otherwise, the court may, at the conclusion of any such examination, make such final order in the premises as the interests of justice require.

## **XII. Private Sale of Property of Corporation.**

(L. 1898, ch. 522.)

Section 1. A receiver duly appointed in this State by and pursuant to a judgment in an action, or by and pursuant to an order in a special proceeding, may, upon application to the court by which such judgment was rendered, or such order was made, and upon notice to such parties as may be entitled to notice of applications made in such action or special proceeding, be authorized by the said court to sell or convey the property, whether real or personal, of the corporation of which he is the receiver, at private sale, upon such terms and conditions as the court may direct.

§ 2. All sales of the property of a corporation heretofore made at private sale by such a receiver, and conveyances thereof, where such sales or conveyances have been authorized or directed by the court having jurisdiction of the action or special proceeding in which such receiver was appointed, are hereby ratified and confirmed in so far as the legal capacity and statutory power of the receiver to make the same are concerned.

## **XIII. Disaffirmance by Receivers of Fraudulent Acts.**

(Personal Property Law, L. 1897, ch. 417.)

§ 7. Disaffirmance of fraudulent acts by executors [receivers] and others.—An executor, administrator, receiver, assignee or trustee, may, for the benefit of creditors or others interested in personal property, held in trust, disaffirm, treat as void and resist any act done, or transfer or agreement made in fraud of the rights of any creditor, including himself, interested in such estate, or property, and a person who fraudulently receives, takes or in any manner interferes with the personal property of a deceased person, or an insolvent corporation, association, partnership or individual is liable to such executor, administrator, receiver or trustee for the same or the value thereof, and for all damages caused by such act to the trust estate. A creditor of a deceased insolvent debtor, having a claim against the estate of such debtor, exceeding in amount the sum of one hundred dollars, may, without obtaining a judgment on such claim, in like manner, for the benefit of himself and other creditors interested in said estate, disaffirm, treat as void and resist any act done or conveyance, transfer or agreement made in fraud of creditors or maintain an action to set aside such act, conveyance, transfer or agreement. Such claim, if disputed, may be established in such action. The judgment in such action may provide for the sale of the property involved, when a conveyance or transfer thereof is set aside, and that the proceeds thereof be brought into court

or paid into the proper surrogate's court to be administered according to law.

#### XIV. Transfer of Property to Receiver.

(L. 1884, ch. 285.)

Section 1. In all cases where receivers have been or shall be appointed for any corporation of this State other than an insurance company on application by the attorney-general, all property, real and personal, and all securities of every kind and nature belonging to such corporation, no matter where located or by whom held, shall be transferred to, vested in and held by such receiver; Provided, however, That such transfer shall only be made when directed by an order of the supreme court, due notice of the application for such order having been made, on the attorney-general and the custodian of the funds, securities or property.

§ 2. In every case where life insurance or annuity companies, or any corporation of the class provided for by article two of the insurance law, entitled "life, health and casualty insurance corporations," whether formed under said article or prior thereto, has been or hereafter may be dissolved, and a receiver thereof appointed, upon the application of the attorney-general, or by action begun in the name of the people of the State of New York, each and every security and fund which shall have been deposited by such company prior to its dissolution, with the superintendent of the insurance department, for the security and protection of its policyholders or any class of such policyholders, under the statutes in such cases made and provided, may, by an order of the supreme court, made at a special term thereof held within the judicial district in which the principal office of such company was located, prior to its dissolution, upon the application of the attorney-general, after service of eight days' written notice of such application upon the superintendent of the insurance department, be transferred from the said superintendent of the insurance department to the receiver of such company; and thereupon the said superintendent shall deliver such funds and securities to such receiver, and in him the title thereto shall immediately vest. Such receiver shall thereupon convert such securities and funds into money, and shall distribute the proceeds thereof, and of each and every class of such funds or securities, among the respective holders of valid policies of such company for whose benefit and security the deposit or deposits were originally made proportionately to the respective valuations of such policies, as shall be ascertained in proceedings taken by such receiver for the valuation of policies and the determination of the liabilities of such company under the statutes in such cases made and provided, and the course and

practice of the supreme court in cases of insolvent corporations, until such valuation shall have been paid in full. If any portion of such proceeds shall then remain, such balance may, under an order of the supreme court in such behalf duly made at special term, be made a part of the general assets of such receivership, and thereupon be distributed by said receiver in payment of or upon the general liabilities of such dissolved company according to law. And in case of a corporation formed under the laws of any other State, doing insurance business in this State of the nature of that done by the corporation above mentioned, in case of any action or proceeding brought or hereafter to be brought in this State by the attorney-general, or in the name of the people of the State of New York, for the winding up its business in this State, or for or involving distribution of its assets therein, the same proceedings may be had with reference to any securities and funds deposited by such corporation with the superintendent of the insurance department of this State under the statutes in such case made and provided, as are hereinbefore provided with reference to deposits of corporations of this State, save only that the order for transfer of the deposit may be made in the judicial district in which the principal office of the corporation in this State was located at the commencement of the action or proceedings, or in the third judicial district. (Thus amended by L. 1896, ch. 322.)

#### XV. Place of Deposit of Funds.

(L. 1883, ch. 378.)

§ 3. All orders appointing receivers of corporations shall designate therein one or more places of deposit, wherein all funds of the corporation not needed for immediate disbursements shall be deposited, and no deposits or investments of such trust funds shall be made elsewhere, except upon the order of the court upon due notice given to the attorney-general.

#### XVI. Payment of Wages by Receivers.

(Labor Law, L. 1897, ch. 415.)

§ 8. Upon the appointment of a receiver of a partnership or of a corporation organized under the laws of this State and doing business therein, other than a moneyed corporation, the wages of the employes of such partnership or corporation shall be preferred to every other debt or claim.

#### Who are included.

This section was formerly L. 1885, ch. 376. The language of the act of 1885, preferred the "wages" of the "employes, operatives and laborers." No change of substance was effected as the term "employes" includes "operatives and laborers." *Palmer v. Van Santvoord*, 153 N. Y.



## Receivers; accounts — R. S., § 42.

612; 47 N. E. Rep. 915 (1897); aff'g 17 App. Div. 194 (1897). An attempt was made by the inferior courts to give to the term "wages" a controlling consideration in determining whether an individual was entitled to preference. If his compensation was "wages" in distinction from "salary or commission" he was entitled to preference. *Matter of Stryker*, 73 Hun, 327 (1893). In this case it was held that the statute did not include bookkeepers, superintendents and firemen paid by the month, the performance of manual labor by whom, if performed at all, is merely incidental to their general employment. *Id.*; see also *People ex rel. Van Valkenburg v. Myers*, 25 Abb. N. C. 368 (1890), and note of editor. In *People v. E. Remington & Sons*, 45 Hun, 329 (1887); aff'd, 109 N. Y. 631; 16 N. E. Rep. 680, it was held that a person employed at an annual salary, with added commissions, to sell goods in China, or a superintendent or attorney were not preferred. The decision seems to be based upon the fact that such persons did not receive "wages" as ordinarily understood.

A person employed to assist the general manager of a corporation in keeping its books, cleaning its office and showroom and assisting in putting together and taking apart its machines, is an employee and entitled to preference. *Brown v. A. B. C. Fence Co.*, 52 Hun, 151; 23 N. Y. St. Rep. 415 (1889).

In *People v. Beveridge Brewing Co.*, 91 Hun, 313; 71 N. Y. St. Rep. 557 (1895), the *Stryker* case was disapproved, and a bookkeeper employed at a salary of \$100 per month was held to be entitled to preference. The restrictive sense given to the term "wages" in the earlier cases, and the question whether the performance of manual labor is controlling were swept away by the decision in *Palmer v. Van Santvoord*, 153 N. Y. 612; 47 N. E. Rep. 915 (1897); aff'g 17 App. Div. 194 (1897). A person employed by a corporation at a monthly salary to sell goods, to pack and unpack machines, etc., was held entitled to preference. The court distinguishes *People v. Remington*, and says: "The mere fact of the employment being such as might be designated an agency would not alone, we conceive, take the case out of the protection of the act. The case of bookkeepers, or persons employed to make sales of merchandise, or of property manufactured by the corporation are, we think 'employees' within the meaning of the act, and their compensation earned is 'wages,' whether such persons are employed by the day, or month, or year, and whether the compensation is denominated 'salary' or 'wages' in the contract of employment."

A manager of a corporation under an agreement to diligently and faithfully serve the company during the time of one year as manager of every branch and department, and to devote his entire time and service to the supervision and management of its business to the best of his ability, is not an employee, operative, or laborer under this section. *Matter of American Lace Works*, 30 App. Div. 321 (1898).

The court follows *People v. E. Remington & Sons*, 45 Hun, 329, as distinguished in *Palmer v. Van Santvoord*, 153 N. Y. 612; 47 N. E. Rep. 915

(1897). "The term 'employees' includes persons employed by a corporation in comparatively subordinate positions, who cannot correctly be described as operatives or laborers; such, for example, as bookkeepers, clerks, salesmen and agents engaged at a regular compensation in soliciting orders for goods." *Id.*

A traveling salesman on a yearly salary is an "employee" within the meaning of this section. *Matter of Fitzgerald*, 21 Misc. Rep. 226 (1896).

## Assignment of claim.

It was stated by the court in *People v. E. Remington & Sons*, 45 Hun, 329 (1887), that an assignment before the appointment of a receiver was invalid as the claim had not accrued. An assignment made after the appointment was sustained in *Matter of Fitzgerald*, 21 Misc. Rep. 226 (1896).

A receiver of a railroad corporation appointed pendente lite in proceedings to foreclose a mortgage is not bound to give preference in payments to unpaid employes for past-due wages. *Franklin Trust Co. v. Northern Adirondack R. R. Co.*, 11 App. Div. 249.

## XVII. Quarterly Accounts of Certain Receivers.

(R. S., pt. 3, ch. 8, tit. 4.)

§ 42. Such receiver shall possess all the power and authority conferred, and be subject to all the obligations and duties imposed, in article three of this title, upon receivers appointed in case of the voluntary dissolution of a corporation. It shall be his duty to keep an account of all moneys received by him, and on the first days of January, April, July and October, in each and every year, to make and file a written statement, verified by his oath that such statement is correct and true, showing the amount of money received by such receiver, his agents, or attorneys, the amount he has a right to retain under the provisions of this title, and the items for which he claims to retain the same, and the distributive share due each person interested therein. He shall pay such distributive share to the person or persons entitled thereto, on demand, at any time after such statement. Such account, statement, and all the books and papers of the corporation in the hands of such receiver, shall at all reasonable times be open for the inspection of all persons having an interest therein. And in case of neglect or refusal to comply with either of the above requirements, or any duty imposed upon him by this title, the supreme court, at either a general or special term, shall on the application of the party aggrieved, unless such neglect or refusal shall be satisfactorily explained to the court, forthwith remove such receiver, and appoint some suitable person as receiver in his place. Such removal shall not vitiate or annul any legal proceedings had by such receiver; but such proceedings shall be continued by such

successor as if no removal had been made. Such receiver shall also be liable to pay to the party interested, interest at the rate of ten per cent. per annum on all moneys due to such party and retained by him more than one day after such demand made as aforesaid. (Thus amended by L. 1858, ch. 348.)

This section by the Code repealing act of 1880 is saved and made applicable to a receiver appointed as prescribed in section 1788 of the Code of Civil Procedure, viz., a receiver appointed in an action to sequester assets or to dissolve a corporation at the suit of the people, a creditor or a stockholder.

#### **XVIII. Biennial Reports Required of Certain Receivers.**

(L. 1883, ch. 378.)

##### **Presentation and filing of account.**

§ 4. It shall be the duty of every receiver of an insurance, banking or railroad corporation, or trust company, to present every six months to the special term of the supreme court, held in the judicial district wherein the place of trial or venue of the action or special proceeding in which he was appointed may then be, on the first day of its first sitting, after the expiration of such six months, and to file a copy of the same, if a receiver of a bank or trust company, with the bank superintendent; if a receiver of an insurance company, with the superintendent of insurance; and in each case with the attorney-general, an account exhibiting in detail the receipts of his trust, and the expenses paid and incurred therein during the preceding six months; and it shall be unlawful for any receiver of the character specified in this section to pay to any attorney or counsel any costs, fees or allowances until the amounts thereof shall have been stated to the special term in this manner, as expenses incurred, and shall have been approved by that court, by an order of the court duly entered; and any such order shall be the subject of review by the appellate division and the court of appeals on an appeal taken therefrom by any party aggrieved thereby. Of the intention to present such account, as aforesaid, the attorney-general, and also the surety or sureties on the official bond of such receiver, shall be given eight days' notice in writing; and the attorney-general shall examine the books and accounts of such receiver at least once every twelve months. (Thus amended by L. 1896, ch. 139.)

See note under "Compensation of Receivers," post, as to application of this section.

Laws of 1883, chapter 378, section 4, only requires that the accounts of receivers of insurance, banking or railroad corporations, or of trust com-

panies shall be filed in the court, and does not call upon the court to pass upon their correctness, or to determine whether or not they should be approved. Their correctness must be determined under the former practice. *People v. Knickerbocker Life Ins. Co.*, 18 Week. Dig. 492 (1884).

#### **XIX. Copy of Report to be Served on Attorney-General; Motion to Compel Service.**

(L. 1880, ch. 537.)

Section 1. All receivers of insolvent corporations who are now required by law to make and file reports of their proceedings shall hereafter, at the time of making and filing such reports, serve a copy thereof upon the attorney-general of this State, and receivers of such corporations as reported to, and were under the supervision of, the banking department, prior to their appointment as such receivers, and who have not been discharged from their respective trusts, and all receivers of such corporations, that may hereafter be appointed, shall on the first day of January and July of each year, during the continuance of their respective trusts file with the superintendent of the banking department a report, verified by oath, in such form as the superintendent may prescribe, showing the condition of their respective trusts. (Thus amended by L. 1881, ch. 639.)

§ 2. In case any receiver of an insolvent corporation shall neglect to make and file a report of his proceedings for thirty days after the time he is now required by law to make and file such report, or shall neglect for the same length of time to serve a copy thereof on the attorney-general, as required by the first section of this act, the attorney-general may make a motion in the supreme court for an order to compel the making and filing and serving a copy on him of such report, or for the removal of such receiver from his office.

§§ 3, 4, superseded by L. 1883, ch. 378.

#### **XX. Compensation of Receivers.**

(L. 1883, ch. 378.)

§ 2. Every receiver shall be allowed to receive, as compensation for his services as such receiver, five per centum for the first one hundred thousand dollars received and paid out, and two and one-half per centum on all sums received and paid out in excess of the said one hundred thousand dollars. But no receiver shall be allowed or shall receive, from such percentages or otherwise, for his said services for any one year, any greater sum or compensation than twelve thousand dollars, nor for any period less than one year more than at the rate of twelve thousand dollars per year, provided that where more than one

## Receivers; compensation — L. 1883, ch. 378, § 2.

receiver shall be appointed, the compensation herein provided shall be divided between such receivers.

It was held in *U. S. Trust Co. v. N. Y., West Shore, etc., R. R. Co.*, 101 N. Y. 478; 5 N. E. Rep. 316 (1886), that this section only applied to receivers of insolvent corporations, and did not apply to a temporary receiver appointed in an action to foreclose a mortgage upon corporate property, but that the fees of such a receiver were regulated by section 3320 of the Code of Civil Procedure, which provides that "a receiver, except as otherwise specially prescribed by statute, is entitled, in addition to his lawful expenses, to such a commission, not exceeding 5 per centum, upon the sums received and disbursed by him, as the court by which, or the judge by whom he is appointed, allows." Inferentially at least the decision goes to the extent of holding that the fees of every temporary receiver, whether appointed in an action to sequester the property of a corporation, an action for its dissolution, or in a proceeding for its voluntary dissolution, are regulated by section 3320. And following the decision, it was held in *Matter of Smith Co.*, 31 App. Div. (1898), that the fees of a temporary receiver in a proceeding for the voluntary dissolution of a corporation are governed by such section. The argument in *U. S. Trust Co. v. N. Y., West Shore, etc., R. R. Co.*, supra, proceeds upon the language of sections 1 and 9 of the act of 1883, the court holding that the entire act only applied to receivers of insolvent corporations, permanent receivers appointed only after the question of insolvency had been determined. Both of these sections were amended in 1896, and section 1, so far at least as an application by the attorney-general is concerned, applies to temporary receivers in an action to sequester the property of a corporation, and in an action for its dissolution. Has the change in language effecting, as it does, the reasoning of the decision, also effected a change of substance? Another feature of the above decision may be open to criticism. Where an action is brought by the attorney-general to annul the charter of a corporation and vacate its franchises, a permanent receiver being appointed by the final order, under what law are his commissions to be determined? The corporation may be perfectly solvent. Does the decision exclude such receiver from section 2 of the act of 1883, and bring him under section 3320 of the Code, so far as his commissions are concerned?

It seems that section 76 of tit. 4, ch. 8, pt. 3, of the R. S., p. 129, fixing the commissions of receivers in proceedings for voluntary dissolution and by reference made applicable to receivers in actions for dissolution and annulment, is superseded by L. 1883, ch. 378, § 2, but if the decision in *U. S. Trust Co. v. N. Y., West Shore, etc., R. R. Co.*, excludes permanent receivers appointed in an action by the people to annul a charter, from the act of 1883, they may be held entitled to commissions under section 76 "not exceeding the amount allowed by law to executors and administrators."

Under the act of 1883 or section 3320 of the Code, the court cannot allow the receiver more than 5 per cent. upon the amount received and disbursed by him, under the guise of extra compensation. *Matter of Orient Mut. Ins. Co.*, 21 N. Y. Supp. 237; 50 N. Y. St. Rep. 460 (1892). If property is never within the possession of a receiver, he is not entitled to commissions. In *re Woven Tape Skirt Co.*, 85 N. Y. 506.

An order cannot be made directing a receiver to pay over the entire fund in his hands without authorizing him to deduct his commissions and expenses, or in any way providing for their payment. *Galster v. Syracuse Savings Bk.*, 29 Hun, 594 (1883).

A receiver is entitled to have his commission calculated and allowed upon the final settlement and disposition of his accounts. *Matter of Security Life Ins. Co.*, 31 Hun, 36 (1883).

Under L. 1883, ch. 378, the court ought to scrutinize closely and critically, receivers' charges. *Rogers v. Adriatic Ins. Co.*, N. Y. Daily Register, September 19, 1884.

The same principle should be applied by a receiver as to assignees and trustees that negligence, inattention and misconduct resulting in probable losses are a ground for refusing to award him commissions. *Clapp v. Clapp*, 49 Hun, 195 (1888).

A receiver cannot be allowed upon his accounting both commissions and a sum for his services. *Hynes v. McDermott*, 3 N. Y. St. Rep. 582 (1886).

L. 1883, ch. 378, does not affect the compensation of receivers previously appointed. *People ex rel. Newcomb v. McCall*, 65 How. Pr. 442 (1883); aff'd, 94 N. Y. 587; *Matter of Security Life Ins. Co.*, 31 Hun, 36 (1883).

Prior to the passage of L. 1883, ch. 378, the commissions of a receiver of an insolvent life insurance company were properly fixed by the court which appointed him within the limit of 5 per cent. on receipts and disbursements. *Attorney-General v. Guardian Life Ins. Co.*, 93 N. Y. 631 (1883).

Proceeds of securities in hands of superintendent of insurance are assets on which the receiver is entitled to commissions. *Attorney-General v. North Am. Life Ins. Co.*, 89 N. Y. 94 (1882).

Premium notes and loans made on policies are not assets on which the receiver is entitled to commissions. *Id.*

In computing the commissions of a receiver of a corporation upon his resignation, only the amount of money which has actually come into his hands should be considered. *People v. Mutual Benefit Association*, 39 Hun, 49 (1886).

Commissions will not be allowed a receiver upon money merely turned over to him by his predecessor in office. *Attorney-General v. Continental Life Ins. Co.*, 32 Hun, 223 (1884).

Where a receiver was never entitled to receive a certain sum of money and the order directing payment to him was erroneous, and was reversed by the court on appeal, he should not retain commissions and counsel fees before making restitution thereof. *Pittsfield Nat. Bk. v. Bayne*, 140 N. Y. 321; 35 N. E. Rep. 630; 55 N. Y. St. Rep. 738 (1893).



The commissions of a temporary receiver appointed under section 2423 of the Code of Civil Procedure are not to be computed simply upon the cash which actually comes into his hands, but he may be entitled, in an extreme case, to 2-1-2 per cent. of the value of the property coming into his hands for receiving and protecting the same, such amount to be determined and allowed by the court. *Matter of Smith Co.*, 31 App. Div. 39 (1898).

If receiver allows the business to proceed the same as before his appointment, he is only entitled to commissions on the proceeds which come into his hands. *Matter of Woven Tape Skirt Co.*, 85 N. Y. 506.

The court in the case *Matter of Smith Co.*, 31 App. Div. 39 (1898), discusses the question of the amount of commissions to which a receiver is entitled for merely receiving and protecting the property. "It has long been settled that executors and administrators are entitled to one-half commissions for receiving and one-half commissions for paying out the moneys of the estate, and there is no reason why the exercise of judicial discretion conferred by section 3320 should by a different construction be limited to cash received."

## XXI. Removal of Receiver on Motion of Attorney-General.

(L. 1883, ch. 378.)

§ 7. The attorney-general may, at any time he deems that the interests of the stockholders, creditors, policyholders, depositors or other beneficiaries interested in the proper and speedy distribution of the assets of any insolvent corporation will be subserved thereby, making a motion in the supreme court at a special term thereof, in any judicial district, for an order removing the receiver of any insolvent corporation and appointing a receiver thereof in his stead, or to compel him to account, or for such other and additional order or orders as to him may seem proper to facilitate the closing up of the affairs of such receivership, and any appeal from any order made upon any motion under this section shall be to the general term of said court of the department in which such motion is made.

This section supersedes L. 1880, ch. 537, § 3, to the same effect. As to application of this section, see note under "Compensation of Receivers," ante.

## XXII. Service of Papers on Attorney-General.

(L. 1883, ch. 378.)

§ 8. A copy of all motions and all motion papers, and a copy of any other application to the court, together with a copy of the order or judgment to be proposed thereon to

the court, in every action or proceeding now pending for the dissolution of a corporation or a distribution of its assets, or which shall hereafter be commenced for such purpose, shall, in all cases, be served on the attorney-general, in the same manner as provided by law for the service of papers on attorneys who have appeared in actions, whether the applications but for this law would be ex parte or upon notice, and no order or judgment granted shall vary in any material respect from the relief specified in such copy or order, unless the attorney-general shall appear on the return day and have been heard in relation thereto; and any order or judgment granted in any action or proceeding aforesaid, without such service of such papers upon the attorney-general, shall be void, and no receiver of any such corporation shall pay to any person any money directed to be paid by any order or judgment made in any such action or proceeding, until the expiration of eight days after a certified copy of such order or judgment shall have been served as aforesaid upon the attorney-general.

This section supersedes L. 1880, ch. 537, § 4, as amended by L. 1882, ch. 331, to the same effect. See section 2429 of Code of Civil Procedure, authorizing the court, on such notice as it shall require, to relieve a receiver in a proceeding for the voluntary dissolution of a corporation from failure to give any notice required by law.

L. 1883, ch. 378, does not apply to an action to foreclose a corporate mortgage, or to temporary receivers generally. *Whitney v. N. Y. & Atlantic R. R. Co.*, 32 Hun, 164 (1884); *U. S. Trust Co. v. N. Y., West Shore, etc., R. R. Co.*, 101 N. Y. 478; 5 N. E. Rep. 316 (1885). But see note under "Compensation of Receivers," ante.

The attorney-general has the power to accept short notice under this section. *Matter of Peekamoose Fishing Club*, 151 N. Y. 511; 46 N. E. Rep. 1037 (1897).

The provisions of this section apply to voluntary proceedings for the dissolution of a corporation and such service is jurisdictional. *People v. Seneca Lake Grape & Wine Co.*, 52 Hun, 174; 23 N. Y. St. Rep. 346 (1889); *Matter of Broadway Ins. Co.*, 23 App. Div. 283. But see Code Civ. Pro., § 2429, as amended by L. 1895, ch. 175, as to relief by court for certain omissions of notice.

Service of motion papers on attorney-general in creditors' suit for sequestration is jurisdictional. *Whitney v. N. Y. & Atlantic R. R. Co.*, 32 Hun, 164 (1884).

An application by the receiver of a corporation acting under section 72, of tit. 4, ch. 8, pt. 3, of R. S., for a warrant for the examination of the witness as to the property of the corporation, can be made only upon notice to the attorney-general as provided by this section. *Matter of Stonebridge*, 57 Hun, 441; 32 N. Y. St. Rep. 1070 (opinion of Bartlett, J., 1890).

The receiver of a corporation is not required to give notice to the attorney-general of every suit

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 Receivers; preference of actions — L. 1883, ch. 378, §§ 10, 5.
 

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he may be authorized to commence, although notice of proceedings for the dissolution of a corporation must be given to him. *Nealis v. American Tube & Iron Co.*, 76 Hun, 220; 59 N. Y. St. Rep. 120 (1894).

The provisions of this section do not require notice to be given to the attorney-general of an application for an order to show cause why books and papers should not be produced by a receiver on his accounting. *Greason v. Goodewille-Wyman Co.*, 38 Hun, 138 (1885).

Where the receiver and a claimant stipulate for the reference of a claim, notice to the attorney-general is not prerequisite to obtaining the order, since it is not an application to the court within the meaning of this section. *People v. American Steam Boiler Ins. Co.*, 14 Misc. Rep. 162 (1895).

Where a corporation has been dissolved and its assets are in the hands of a receiver it is not necessary that the papers in a motion in a special proceeding to determine the validity of a claim should be served upon the attorney-general, under this section, since the proceeding is not for the distribution of the assets. *People v. American Steam Boiler Ins. Co.*, 3 App. Div. 504; 73 N. Y. St. Rep. 826 (1896).

This section does not require notice to the attorney-general of an application for the appointment of an ancillary receiver of the property of a foreign corporation, situated in this State. *Woerishoffer v. North River Construction Co.*, 6 Civ. Pro. Rep. 113 (1884).

The omission of a receiver of an insolvent corporation appointed in proceedings taken for its voluntary dissolution, to serve upon the attorney-general notice of the application for an order directing the sale of its property, is cured by a subsequent order of the court, made upon due notice to the attorney-general, confirming such sale. This is certainly the case under the provisions of section 2429 of the Code of Civil Procedure. *Johnson v. Raymer*, 25 App. Div. 598.

While a failure to give notice to the attorney-

general of an application for the appointment of a receiver of an insolvent corporation vitiates the appointment thereon made, it does not affect a subsequent appointment made upon a judgment of which due notice was given. *Matter of Stonebridge*, 37 N. Y. St. Rep. 617 (1891); *aff'd*, 128 N. Y. 618; 28 N. E. Rep. 253.

### XXIII. Preference of Actions and Appeals Brought by or Against a Receiver.

(L. 1883, ch. 378.)

§ 10. All actions or other legal proceedings, and appeals therefrom or therein brought by or against a receiver of any of the insolvent corporations referred to in this act, shall have a preference upon the calendars of all courts next in order to actions or proceedings brought by the people of the State of New York.

See note under "Compensation of Receivers," ante, as to application of this section; see, also, "Powers and Duties of Receivers," ante, note under section 68 of the Revised Statutes, as to actions by and against receivers.

### XXIV. Intervention of Policyholders.

(L. 1883, ch. 378.)

§ 5. In case of the intervention of any policyholder or depositor, by permission of the court, such policyholder or depositor shall defray the legal expenses thereof, and no allowance shall be made for costs or fees to any attorney of such policyholder or depositor.

See note under "Compensation of Receivers," ante, as to application of this section.

## PART XI.

## THE TAXATION OF CORPORATIONS.

(L. 1896, ch. 908.)

## 1. Local purposes.

- Sec. 1. Short title of tax law.  
 2. Definitions.  
 3. Property liable to taxation.  
 4. Exemptions from taxation.  
 6. No deduction allowed for indebtedness fraudulently contracted.  
 7. When property of non-residents is taxable.  
 11. Place of taxation of property of corporations.  
 12. Taxation of corporate stock.  
 20. Ascertaining facts for assessment.  
 27. Reports of corporations.  
 28. Penalty for omission to make statement.  
 31. Corporations, how assessed.  
 34. Debts owing to non-residents of the United States, how assessed.  
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 37. Correction and verification of tax-roll.  
 38. Filing of roll and notice thereof.  
 39. Assessors to apportion valuation of railroad, telegraph and telephone, or pipeline companies between school districts.  
 57. Statement of taxes upon certain corporations by clerk of supervisors.  
 58. Statement of valuation to be furnished to comptroller.  
 70. Notice by collector.  
 71. Collection of taxes.  
 73. Payment of taxes by railroad and certain other corporations.  
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## 2. State purposes.

180. Organization tax.  
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 182. Franchise tax on corporations.  
 183. Certain corporations exempted from tax on capital stock tax.\*  
 184. Additional franchise tax on transportation and transmission corporations and associations.  
 185. Franchise tax on elevated railroads, or surface railroads not operated by steam.  
 186. Franchise tax on water-works companies, gas companies, electric or steam heating, lighting and power companies.  
 187. Franchise tax upon insurance corporations.  
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 189. Reports of corporations.  
 190. Value of stock to be appraised.

\* So in the original.

Sec. 191. Further requirements as to reports of corporations.

192. Powers of comptroller to examine into affairs of corporations.  
 193. Notice of statement of tax; interest.  
 194. Payment of tax and penalty for failure.  
 195. Revision and readjustment of accounts by comptroller.  
 196. Review of determination of comptroller by certiorari.  
 197. Regulations as to such writ of certiorari.  
 198. Warrant for the collection of taxes.  
 199. Information of delinquents.  
 200. Action for recovery of taxes; forfeiture of charter of delinquent corporations.  
 201. Reports to be made by the secretary of State.  
 202. Exemptions from other State taxation.  
 203. Application of tax.

## Short title.

Section 1. This chapter shall be known as the tax law.

The Tax Law is a revision and consolidation of the laws of the State relating to taxation, was prepared by the statutory revision commissioners and adopted by the legislature of 1896. Nearly all previous laws relating to taxation are repealed, but pursuant to section 32 of the Statutory Construction Law the Tax Law is to be construed as a continuation or amendment of the laws repealed, and not as a new enactment. The decisions, therefore, rendered under the old law, in so far as the language of the statute has not been substantially changed, are applicable under the new revision. Accrued or accruing rights, pending proceedings and penalties and forfeitures incurred at the time of the passage of the Tax Law and under laws repealed thereby are saved by section 31 of the Statutory Construction Law, post.

## Definitions.

§ 2. 1. "Tax district," as used in this chapter, means a political subdivision of the State having a board of assessors authorized to assess property therein for State and county taxes.

2. "County treasurer" includes any officer performing the duties devolving upon such officer under whatever name.

3. The terms "land," "real estate" and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures,



erected upon, under or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, craning or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, underground or elevated railroads; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or grounds; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity, or any property, substance or product capable of transportation or conveyance therein or that is protected thereby; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the State.

The statute means by a taxable interest such an estate as will protect the erection or affixing thereon, and the possession of buildings and fixtures, though not accompanied by the fee. *People ex rel. Dunkirk, etc., R. R. Co. v. Cassity*, 46 N. Y. 46. Gas mains are taxable as real estate. *People ex rel. Equitable Gas Light Co. v. Barker*, 81 Hun, 22; s. c., 62 N. Y. St. Rep. 563; 30 N. Y. Supp. 586. The foundations, columns and superstructure of an elevated railroad are taxable as real estate. *People ex rel. N. Y. Elevated R. R. Co. v. Commissioners*, 82 N. Y. 459; *People ex rel. N. Y. & Harlem R. R. Co. v. Commissioners of Taxes*, 101 N. Y. 322.

The interest of a lessee for 999 years at a nominal rent is taxable as real estate. *Trustees of Elmira v. Dunn*, 22 Barb. 402.

4. The terms "personal estate," and "personal property," as used in this chapter, include chattels, money, things in action, debts due from solvent debtors, whether on account, contract, note, bond or mortgage; debts and obligations for the payment of money due or owing to persons residing within this State, however secured or wherever such securities shall be held; debts due by inhabitants of this State to persons not residing within the United States for the purchase of any real estate; public stocks, stocks in moneyed corporations, and such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate.

Corporate franchises are personal property. *People ex rel. Panama R. R. Co. v. Commissioners of Taxes*, 104 N. Y. 240, and cases cited under Tax L., § 31. For the purpose of taxation personal property may be separated from its owner and he may be taxed, on its account, at the place where it is, although not the place of his own

domicile. *Palace Car Co. v. Pennsylvania*, 141 U. S. 18.

#### Property liable to taxation.

§ 3. All real property within this State, and all personal property situated or owned within this State, is taxable unless exempt from taxation by law.

The words "exempt by law" refer to a statutory exemption. *City of Rochester v. Coe*, 25 App. Div. 300.

#### Exemption from taxation.

§ 4. The following property shall be exempt from taxation:

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7. The real property of a corporation or association organized exclusively for the moral or mental improvement of men or women, or for religious, bible, tract, charitable, benevolent, missionary, hospital, infirmary, educational, scientific, literary, library, patriotic, historical or cemetery purposes, or for the enforcement of laws relating to children or animals, or for two or more of such purposes, and used exclusively for carrying out thereupon one or more of such purposes, and the personal property of any such corporation shall be exempt from taxation. But no such corporation or association shall be entitled to any such exemption if any officer, member or employe thereof shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of such purposes, or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof, for any of such avowed purposes, be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association, or for any of its members or employes, or if it be not in good faith organized or conducted exclusively for one or more of such purposes. The real property of any such corporation or association entitled to such exemption held by it exclusively for one or more of such purposes and from which no rents, profits or income are derived, shall be so exempt, though not in actual use therefor by reason of the absence of suitable buildings or improvements thereon, if the construction of such buildings or improvements is in progress, or is in good faith contemplated by such corporation or association. The real property of any such corporation not so used exclusively for carrying out thereupon one or more of such purposes, but leased or otherwise used for other purposes, shall not be exempt, but if a portion only of any lot or building of any such corporation or association is used exclusively for carrying out thereupon one or more such purposes of any such corporation or association, then such

lot or building shall be so exempt only to the extent of the value of the portion so used, and the remaining or other portion to the extent of the value of such remaining or other portion shall be subject to taxation; Provided, however, That a lot or building owned, and actually used for hospital purposes, by a free public hospital, depending for maintenance and support upon voluntary charity shall not be taxed as to a portion thereof leased or otherwise used for the purposes of income, when such income is necessary for, and is actually applied to, the maintenance and support of such hospital. Property held by any officer of a religious denomination shall be entitled to the same exemptions, subject to the same conditions and exceptions, as property held by a religious corporation. (Thus amended by L. 1897, ch. 371.)

This law, in substantially the form in which it is found in subdivision 7, was enacted in 1893, chapter 498, repealed by the Tax Law. It made quite a radical change in the exemption of property held by certain classes of non-business corporations. Prior to 1893 such property, as a rule, was exempt without regard to the uses to which it was devoted. The act of 1893 provided that it should only be exempt in case it was applied to the uses of the corporations, and if rented or used for other purposes should be subject to taxation the same as any other property. In 1897 an exception was made in the case of hospital corporations, provided the income derived from property leased or otherwise used should be applied to the charitable uses of the corporation.

12. All vessels registered at any port in this State and owned by an American citizen, or association, or by any corporation, incorporated under the laws of the State of New York, engaged in ocean commerce between any port in the United States and any foreign port, are exempted from all taxation in this State, for State and local purposes; and all such corporations, all of whose vessels are employed between foreign ports and ports in the United States, are exempted from all taxation in this State, for State and local purposes, upon their capital stock, franchises and earnings, until and including December thirty-first, nineteen hundred and twenty-two.

13. A bond, mortgage, note, contract, account or other demand, belonging to any person not a resident of this State, sent to or deposited in this State for collection; the products of another State, owned by a non-resident of this State and consigned to his agent in this State for sale on commission for the benefit of the owner; moneys of a non-resident of this State, under the control or in the possession of his agent in this State, when transmitted to such agent for the purpose of investment or otherwise.

Foreign capital sent here for investment is protected from taxation though the securities received therefor are left here with the agents of the owner for collection. *Williams v. Supervisors of Wayne*, 78 N. Y. 561; *People ex rel. Ferrer v. Commissioners of Taxes*, 42 Hun, 560. Debts due non-residents on contracts for the sale of real estate situated within the State are taxable by the village assessors against the agent holding them, and are not exempt as being in the State for collection or in the hands of an agent for investment. *People ex rel. Young v. Willis*, 133 N. Y. 383; 31 N. E. Rep. 225; 45 N. Y. St. Rep. 221. An administrator appointed in 1882 and taxed in 1890 on assets of an estate of a decedent who had been a resident of Scotland, cannot be held to be an agent holding funds for investment or as one to whom demands are sent for collection; a sufficient time had elapsed to change the character of the funds if they had been originally sent for investment. *People ex rel. Cochrane v. Coleman*, 128 N. Y. 524; 28 N. E. Rep. 465.

14. The deposits in any bank for savings which are due depositors, the accumulations in any domestic life insurance corporation, held for the exclusive benefit of the insured, other than real estate and stocks, now liable to taxation; and the accumulations of any incorporated co-operative loan association upon the shares of such association held by any person.

A savings bank cannot be taxed on the deposits due from it. *People ex rel. Ithaca Savings Bank v. Beers*, 67 How. Pr. 219. The surplus of a savings bank is exempt under this subdivision. *People ex rel. Newburgh Bank v. Peck*, 22 Misc. Rep. 477; aff'd, 32 App. Div. 624; aff'd, 157 N. Y. 51 (1898). There has been considerable controversy as to whether this subdivision operates to exempt savings bank deposits to both the bank and the depositor. The attorney-general, by opinion rendered July 13, 1896, since the enactment of the Tax Law, held that such deposits are taxable to depositors the same as personal property. He cites in support of his opinion the dicta in the case of *People ex rel. The Savings Bank of New London v. Coleman*, 135 N. Y. 231; 31 N. E. Rep. 1022. We understand that there are two unreported decisions, one by the appellate division of the second department holding that such deposits are taxable to depositors, and another by the appellate division of the third department, holding that they are exempt. A decision by the court of appeals may be expected soon.

15. Moneys collected in the course of the business of any corporation, association or society doing a life or casualty insurance business or both, upon the co-operative or assessment plan, and which are to be used for the payment of assessments, or for death losses or for benefits to disabled members.

16. The owner or holder of stock in an incorporated company liable to taxation on

its capital, shall not be taxed as an individual for such stock.

17. The personal property in excess of one hundred thousand dollars of a mutual life insurance corporation incorporated in this State before April tenth, eighteen hundred and forty-nine.

**No deduction allowed for indebtedness fraudulently contracted.**

§ 6. No deduction shall be allowed in the assessment of personal property by reason of the indebtedness of the owner contracted or incurred in the purchase of non-taxable property or securities owned by him or held for his benefit, nor for or on account of any indirect liability as surety, guarantor, indorser or otherwise, nor for or on account of any debt or liability contracted or incurred for the purpose of evading taxation.

The first clause was held constitutional in *People ex rel. Byjur v. Barker*, 155 N. Y. 330, in which it was held that tobacco imported in original packages was non-taxable. But a corporation is entitled to deduct a debt incurred in the purchase of the stock of another domestic corporation taxable on its capital. Such stock is not non-taxable property, although the tax may not be imposed directly on the stock. *People ex rel. Keppler v. Barker*, 22 App. Div. 120.

**When property of non-residents is taxable.**

§ 7. Non-residents of the State doing business in the State, either as principals or partners, shall be taxed on the capital invested in such business, as personal property, at the place where such business is carried on, to the same extent as if they were residents of the State.

A foreign corporation doing business in this State is taxable upon credits and bills receivable representing goods sold in the State, *People ex rel. Yellow Pine Co. v. Barker*, 23 App. Div. 524; but goods of a foreign manufacturing corporation stored in this State for sale, and the proceeds of which, as sold, are sent to the principal office of the corporation without the State, are not taxable under this section. *People ex rel. Sherwin-Williams Co. v. Barker*, 5 App. Div. 246; aff'd without opinion, 149 N. Y. 623. In estimating the amount of capital of a non-resident employed in this State and taxable, the amount of indebtedness to be deducted is to be ascertained with reference to his whole personal estate. *People ex rel. Barney v. Barker*, 16 App. Div. 266.

The liability of a savings bank to its depositors should be deducted from its assets. *People ex rel. Bridgeport Savings Bank v. Barker*, 17 Misc. 180. In determining the sums invested in business in this State by a foreign corporation, the amount remaining unpaid on property purchased here should be deducted from the value of such property. *Milling Co. v. Barker*, 147 N. Y. 31; 69 N. Y.

St. Rep. 337. The property of foreign corporations is taxable under this section. *People ex rel. T. W. Co. v. Barker*, 141 N. Y. 118; 35 N. E. Rep. 1073; 56 N. Y. St. Rep. 586. The mere fact that a person transacts business here as the agent of a foreign corporation is not sufficient to subject him to taxation. It is essential that he should, in fact, have money invested in a business carried on by him in this State either as a principal or a partner. *McLean v. Jephson*, 123 N. Y. 142; 25 N. E. Rep. 409; 33 N. Y. St. Rep. 490.

**Place of taxation of property of corporations.**

§ 11. The real estate of all incorporated companies liable to taxation, shall be assessed in the tax district in which the same shall lie, in the same manner as the real estate of individuals. All the personal estate of every incorporated company liable to taxation on its capital shall be assessed in the tax district where the principal office or place for transacting the financial concerns of the company shall be, or if such company have no principal office, or place for transacting its financial concerns, then in the tax district where the operations of such company shall be carried on. In the case of toll bridges, the company owning such bridge shall be assessed in the tax district in which the tolls are collected; and where the tolls of any bridge, turnpike, or canal company are collected in several tax districts, the company shall be assessed in the tax district in which the treasurer or other officer authorized to pay the last preceding dividend resides.

Report required. Tax Law, § 27. Corporations are assessed pursuant to Tax Law, section 31. Corporations paying a general State franchise or license tax other than for organization, are exempt from the payment of State taxes locally assessed on personality. Tax Law, § 202.

The principal office or place of business designated in its certificate is the residence of a corporation for purposes of taxation, and the statement is conclusive upon it. *People ex rel. Knickerbocker-Press v. Barker*, 87 Hun, 341; s. c., 63 N. Y. St. Rep. 149; 34 N. Y. Supp. 269; *Western Trans. Co. v. Scheu*, 19 N. Y. 408; *Oswego Starch Factory v. Dolloway*, 21 N. Y. 449; *Peter Cooper's Glue Factory v. McMahon*, 15 Abb. N. C. 314; *Union Steamboat Co. v. Buffalo*, 82 N. Y. 351; *Cheseborough Manuf. v. Coleman*, 44 Hun, 545. But where the act under which a corporation was organized did not require that it should be stated in the articles where the principal office should be established, it was held that the statement that it was to be in a certain place was not conclusive, but its actual principal place of business determined its residence for the purpose of taxation, and in such case it was competent for the corporation to remove and change its place of residence. *Austen v. Telephone Co.*, 73 Hun, 96; s. c., 56 N. Y. St. Rep. 79; 25 N. Y. Supp. 916. A cor-



poration is estopped by its sworn statement made to the taxing officers locating its principal office, from denying such residence. *McLean v. Couper Milling Co.*, 38 N. Y. St. Rep. 893; s. c., 14 N. Y. Supp. 509; *Matter of McLean*, 138 N. Y. 158; 33 N. E. Rep. 821; 51 N. Y. St. Rep. 837. The personal property within this State, of corporations, whether domestic or foreign, is taxed at the place where its principal office, within this State, is located, without regard to the particular situs of the property. *People ex rel. The Keystone Gas Co. v. The Assessors of Olean*, 15 N. Y. St. Rep. 461.

As to place of assessment, see *People ex rel. Gen. Elec. Co. v. Barker*, 91 Hun, 590; and *People ex rel. Edison Elec. Co. v. Barker*, id. 594.

### Taxation of corporate stock.

§ 12. The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment-roll or shall be exempt by law, together with its surplus profits or reserve funds, exceeding ten per centum of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the laws of this State, shall be assessed at its actual value.

The statutory revision commissioners in their note to this section state that it is L. 1857, ch. 456, § 3, without change. The decisions here cited were rendered under the act of 1857 and references are to that act.

For manner of assessment, see §§ 27, 31, Tax Law, and cases cited.

### Meaning of "capital stock."

The words "capital stock" as used in sections 12 and 31 of the Tax Law refer to the capital of the corporation and not to its shares of stock. *People ex rel. Union Trust Co. v. Coleman*, 126 N. Y. 433; 27 N. E. Rep. 818; 38 N. Y. St. Rep. 237; *Oswego Starch Factory v. Dolloway*, 21 N. Y. 449; *U. S. Trust Co. v. Mayor*, 77 Hun, 182; 59 N. Y. St. Rep. 496; *People ex rel. Panama R. R. Co. v. Comrs. of Taxes*, 104 N. Y. 240.

### Theory of taxing corporate stock.

The theory of the Tax Law is to prescribe a method of computation by which to ascertain a total valuation of the taxable corporate property from which a deduction of the assessed value of its real estate may be made in order to determine the balance which is properly assessable as its personal property. *People ex rel. Equitable Gas Light Co. v. Barker*, 144 N. Y. 94; 39 N. E. Rep. 13; 63 N. Y. St. Rep. 33; rev'g 81 Hun, 22; 62 N. Y. St. Rep. 563.

### What is included in capital.

The capital of a corporation is the actual value of all its tangible property, including the value of its real estate, wherever situated. *People ex*

*rel. Manhattan Ry. Co. v. Barker*, 146 N. Y. 30; 40 N. E. Rep. 996; 66 N. Y. St. Rep. 658.

### Real estate included.

The value of its real estate is to be included at its actual and not its assessed value. *People ex rel. Equitable Gas Light Co. v. Barker*, 66 Hun, 21; 49 N. Y. St. Rep. 428; *People ex rel. Consolidated Telegraph, etc., Co. v. Barker*, 7 App. Div. 27. Although the deduction is to be made upon the basis of its assessed value, see cases cited, post.

The assessors are also to include in the valuation of corporate capital surplus or reserve funds. "It could not have been intended that the value of the surplus should be assessed in addition to the value of the capital stock, for the valuation placed upon the latter should include the former" (*Earl, J.*). *People ex rel. Twenty-third St. R. R. Co. v. Commissioners of Taxes*, 95 N. Y. 554.

### Evidence of value of capital.

In ascertaining the value of the corporate stock the assessors have the right to act upon evidence outside of that furnished by the corporation, and in making inquiry and collecting facts they are not bound by the strict rule which governs ordinary judicial proceedings. Their decision will be sustained if they act in good faith upon their best judgment, upon reasonable grounds, and do not err in the principle of assessment to the prejudice of the taxpayer. *People ex rel. Equitable Gas Light Co. v. Barker*, 144 N. Y. 94; 39 N. E. Rep. 13. They may consider the earnings of the corporation. *People ex rel. Manhattan Ry. Co. v. Barker*, 146 N. Y. 304; 40 N. E. Rep. 996; 66 N. Y. St. Rep. 658.

### Market value of stock.

The market value of its stock may be taken into consideration in determining the value of the corporate property, *People ex rel. Knickerbocker Fire Ins. Co. v. Coleman*, 44 Hun, 410; aff'd, 107 N. Y. 541; 14 N. E. Rep. 431; *People ex rel. Malcom Brewing Co. v. Neff*, 19 App. Div. 596; aff'd, 154 N. Y. 437; but it is erroneous to base the value of the capital upon the market value of the corporate shares, as it is the actual value of the property and not the selling value of the corporate shares which is assessable. *People ex rel. Bleecker St., etc., v. Barker*, 85 Hun, 210; 66 N. Y. St. Rep. 474.

It has been held, however, where the market value of the shares was taken as the basis of the value of the capital, the assessment is not void and the amount will not be reduced, unless it appears that the corporation was aggrieved. *People ex rel. Equitable Gas Light Co. v. Barker*, 66 Hun, 21; 49 N. Y. St. Rep. 428; aff'd, 137 N. Y. 544.

### Franchises not included.

The capital of a corporation is the actual value of its tangible property, and, therefore, does not include the value of its franchises. *People ex rel. Manhattan Ry. Co. v. Barker*, 146 N. Y. 304; 40

## Local taxation — Tax L., § 12.

N. E. Rep. 996; 66 N. Y. St. Rep. 658; People ex rel. Consolidated Telegraph, etc., Co. v. Barker, 7 App. Div. 27 (1896); People ex rel. Brooklyn City R. R. Co. v. Neff, 19 id. 590 (1897); People ex rel. Coney Island & Brooklyn R. R. Co. v. Neff, 15 id. 585 (1897); People ex rel. Edison Electric Illuminating Co. v. Neff, 19 id. 599 (1897).

The value of its franchises cannot be included in an assessment of the personal property of an elevated railroad corporation, and where a lease held by it necessarily includes the use of the franchises of the lessor corporation it is improper to include the cost of the lease without deduction of the value of such franchises. People ex rel. Manhattan Ry. Co. v. Barker, 152 N. Y. 417 (1897).

This affords an additional reason for rendering the market value of the capital stock an inaccurate basis of valuation, because the market value of the shares is largely determined by the value of the corporate franchises.

**Debts not included.**

The assessors should deduct the debts of the corporation — or perhaps, more properly, should consider them in fixing the actual value of the capital of the corporation. People ex rel. Second Ave., etc., Co. v. Barker, 141 N. Y. 196; 36 N. E. Rep. 184; 56 N. Y. St. Rep. 834. The actual value of the stock is the basis and where it is of no value because of its indebtedness exceeding its assets, it should not be assessed. People ex rel. West Side & Yonkers R. R. Co. v. Comrs. of Taxes, 31 Hun, 82. The valuation of the capital having been once fixed, no further deduction can be made on account of indebtedness. People ex rel. Broadway, etc., R. R. Co. v. Comrs. of Taxes, 1 Th. & C. 635; People ex rel. Butchers, etc., Co. v. Asten, 100 N. Y. 597. The deposits of a savings bank of another State are to be deemed debts. People ex rel. Groton Savings Bk. v. Barker, 154 N. Y. 122; 47 N. E. Rep. 1103; People ex rel. Bridgeport Savings Bk. v. Barker, 154 N. Y. 128.

**Exempt property not included.**

The assessors should deduct the capital invested in property exempt from taxation by law. People ex rel. Edison, etc., Co. v. Barker, 139 N. Y. 55; 34 N. E. Rep. 722; 54 N. Y. St. Rep. 444. Thus it was held that the capital of a corporation invested in United States patent rights is exempt. People ex rel. N. Y. & N. J. Telephone Co. v. Neff, 15 App. Div. 8; People ex rel. Edison Electric Illuminating Co. v. Neff, 156 N. Y. 417; aff'g 19 App. Div. 417 (1898).

**Dividends; when included.**

Dividends declared but not credited to the stockholders, and retained in the business of the corporation are taxable as property of the corporation. People ex rel. Hawley, etc., Lumber Co. v. Barker, 23 App. Div. 532. But see People ex rel. U. S. Trust Co. v. Barker, 86 Hun, 131; 67 N. Y. St. Rep. 133. If the declared dividend is not reclaimed in the business of the corporation, although unclaimed, it is not subject to tax-

ation as a corporate asset. People ex rel. N. Y. & N. J. Telephone Co. v. Neff, 15 App. Div. 8. The mere fact that a corporation has recently declared a dividend is not sufficient to authorize the imposition of a tax, if the report of the treasurer shows that there is no basis therefor. People ex rel. Edison, etc., Co. v. Barker, 141 N. Y. 251; 36 N. E. Rep. 196; 56 N. Y. St. Rep. 823.

**Assessed value of real estate to be deducted.**

Having determined the total valuation of the corporate property the assessors are to deduct the assessed value of its real estate, wherever situated. People ex rel. Van Nest v. Comrs. of Taxes, 80 N. Y. 573, in which case the court said: "It seems that to entitle a corporation to the deduction of the value of its real estate from that of its capital the real estate must have been paid for out of its capital." See also People ex rel. Butchers, etc., Co. v. Asten, 100 N. Y. 597. The deduction should be at the assessed and not the actual value of the real estate. People ex rel. Edison Electric Illuminating Co. v. Harkness, 44 N. Y. Supp. 51. This seems to be the rule if the real estate is situated within the State. People ex rel. Twenty-third St. R. R. Co. v. Comrs. of Taxes, 95 N. Y. 554. If the real estate is situated in another State the deduction should be made at the assessed value of the real estate, if known, in the absence of controlling evidence showing a different valuation. People ex rel. Fairfield Chemical Co. v. Coleman, 115 N. Y. 178; 21 N. E. Rep. 1056; 24 N. Y. St. Rep. 584; but the price paid in the absence of other evidence may be taken as the assessable value. People ex rel. Twenty-third St. R. R. Co. v. Coleman, supra. If neither the assessed value or price paid is known, the actual value of such real estate, so far as ascertainable, should probably be taken as the basis of deduction. People ex rel. Panama R. R. Co. v. Comrs. of Taxes, 104 N. Y. 240. Even though the real estate may be assessed at less than its actual value, the assessed value is the proper basis of deduction. People ex rel. Equitable Gas Light Co. v. Barker, 144 N. Y. 94; 39 N. E. Rep. 13; 63 N. Y. St. Rep. 33; rev'g 81 Hun, 22; 62 N. Y. St. Rep. 563.

**Capital of insurance companies.**

A corporation having acquired a fund from earned premiums of insurance paid to it, could not, under its charter, divide it among its members, and it had no other assets. Held, that it was taxable on such fund as capital. Mutual Ins. Co. of Buffalo v. Supervisors of Erie, 4 N. Y. 442.

A fund accumulated by a mutual insurance company from its profits, which is to continue liable for losses, but for which certificates are issued to members, is to be taxed as a part of the company's capital. Sun Mut. Ins. Co. v. Mayor, etc., of New York, 8 N. Y. 241.

**Recapitulation.**

The rules governing the assessment of such tax have been stated to be as follows: First. The

subject of valuation and assessment is never the share of stock, but always the company's capital and surplus. Second. Such capital and surplus must be assessed at its own value, and when that is correctly known and ascertained, no other value can be substituted for it. Third. Where its amount and value are undisclosed and unknown the assessors may consider the market value of the share of stock and the general condition of the company as indicative of surplus or deficiency and of the probable amount of either. Fourth. They may further resort to such means of information when the amount of capital and surplus is disclosed, but the assessors have sufficient reason to disbelieve the statement and such reason is founded upon facts established by competent proof.

#### Ascertaining facts for assessment.

§ 20. The assessors in each tax district may, by mutual agreement, divide it into convenient assessment districts not exceeding the number of such assessors. The assessors in each tax district shall annually, between May first and July first, ascertain by diligent inquiry all the property and the names of all the persons taxable therein.

In collecting material for making an assessment, the assessors may avail themselves of such information by inquiry, and otherwise, as they can obtain. If the party assessed claims that injustice has been done, he may file his affidavit, which the assessors may afterward examine. *People ex rel. v. McComber*, 24 N. Y. St. Rep. 902; s. c., 7 N. Y. Supp. 71 (1889).

The commissioners in making an assessment are not bound by statements that are contradicted and which they had good reason to disbelieve. *People ex rel. Manhattan Ry. Co. v. Barker*, 146 N. Y. 304; 40 N. E. Rep. 996; 66 N. Y. St. Rep. 658 (1895).

One assessor cannot make an assessment, 7 Cow. 530; 21 Wend. 175; 3 Den. 598; 4 id. 126; 1 N. Y. 82; *People ex rel. Mygatt v. Supervisors of Chenango*, 11 N. Y. 563 (1854); *Metcalf v. Messenger*, 46 Barb. 325 (Monroe Gen. T., 1864); but two of three assessors can. *People ex rel. Delaware, etc., Canal Co. v. Parker*, 45 Hun, 432 (1887).

Where one of the assessors of a town called in May upon a person then resident therein, and made an entry of his name and the value of his personal estate, and informed him of the fact, and thereafter the person removed to another county, before the assessors completed the assessment-roll, which was in July—held, that the assessment was not made until July, and the assessors had no jurisdiction to make it. *People ex rel. Mygatt v. Supervisors of Chenango*, 11 N. Y. 563 (1854).

It seems that the assessment should be considered as made at the expiration of the time limited for making the inquiry, namely, on the 1st day of July. *Mygatt v. Washburn*, 15 N. Y. 316 (1857).

A change of residence of the owner, or in the ownership of property, after the 1st day of

July, does not affect the assessment-roll. Any changes the assessors are authorized to make after date are simply to correct mistakes. *Boyd v. Gray*, 34 How. Pr. 323 (1867).

A person not liable to assessment on the 1st day of July may recover damages from the assessors for assessing him after that day, for the same year. *Clark v. Norton*, 49 N. Y. 243 (1872); aff'g 3 Lans. 484; *Westfall v. Preston*, 49 N. Y. 349 (1872).

Although one purchasing property after the completion of the assessment-roll agrees to pay the tax thereon, this confers no jurisdiction upon the assessors to change the assessment to him, nor does it waive the legal rights of the purchaser in this respect. *Clark v. Norton*, 49 N. Y. 243 (1872); aff'g 3 Lans. 484.

Where notice of the completion of an assessment-roll was given July 15th, and though plaintiff's name did not appear thereon, nor any memoranda to indicate that he was to be assessed, his agent was notified that he would be assessed when information was procured, and afterward his name was placed on the roll with an entry of his property, against the agent's protest,—held, that the assessment was void. *Overing v. Foote*, 65 N. Y. 263 (1875).

#### Reports of corporations.

§ 27. The president or other proper officer of every moneyed or stock corporation deriving an income or profit from its capital or otherwise shall, on or before June fifteenth, deliver to one of the assessors of the tax district in which the company is liable to be taxed and, if such tax district is in a county embracing a portion of the forest preserve, to the comptroller of the State, a written statement specifying:

1. The real property, if any, owned by such company, the tax district in which the same is situated and, unless a railroad corporation, the sums actually paid therefor.

2. The capital stock actually paid in and secured to be paid in excepting therefrom the sums paid for real property and the amount of such capital stock held by the State and by any incorporated literary or charitable institution, and

3. The tax district in which the principal office of the company is situated or in case it has no principal office, the tax district in which its operations are carried on.

Such statement shall be verified by the officer making the same to the effect that it is in all respects just and true. If such statement is not made within twenty days after the fifteenth day of June, or is insufficient, evasive or defective, the assessors may compel the corporation to make a proper statement by mandamus.

Corporations may be assessed though no statement is made by them to the assessors as required by law. Such a statement when made is not conclusive upon the assessors. It is the judgment of the assessors that the law requires. *People*



*ex rel. Manhattan Fire Ins. Co. v. Comrs. of Taxes*, 76 N. Y. 64 (1879).

The commissioners of assessment have jurisdiction to assess a corporation that omits to make a statement of its financial condition. If such a corporation omits to appear and demand a correction of the preliminary assessment, it can obtain no relief from overvaluation by certiorari. *People ex rel. The Mutual Union Tel. Co. v. Comrs. of Taxes*, 99 N. Y. 254.

Nor does the failure to file such a statement prevent a party aggrieved from appearing before the assessors. *Id.*

This case is distinguished from *People ex rel. Mutual Union Tel. Co. v. Comrs.*, 99 N. Y. 254, because in the latter case the relator did not appear before the commissioners on the grievance day, and hence was deemed to have waived any right of review. *Id.*

It is the duty of a company to make the statement required by sections 3 and 4 above; but the courts have no power to impose any other punishment than that prescribed by the statute, and a writ of certiorari will not be quashed on the ground that the return shows that no such statement has been made. *People ex rel. West Shore R. R. Co. v. Pitman*, 9 N. Y. St. Rep. 469 (1887, G. T.).

Attorney-General Hancock, on January 9, 1897, rendered an opinion on this section, of which the following is a portion: "While the meaning of this clause [every moneyed or stock corporation deriving an income or profit from its capital or otherwise] is not perfectly clear, I think the words are intended to characterize a general class of corporations, and not to describe financial condition. It will be observed that the section does not require that the report to be made by these corporations shall contain any item of income or profit. In my opinion, every moneyed or stock corporation organized for the purpose of acquiring income or profit should make the report prescribed by section 27."

#### Penalty for omission to make statement.

§ 28. In case of neglect to furnish such statements within thirty days after the time above provided, the company so neglecting shall forfeit to the people of this State for each statement so omitted to be furnished, the sum of two hundred and fifty dollars, and it shall be the duty of the attorney-general to prosecute for such penalty upon information which shall be furnished him by the comptroller. Upon such statement being furnished and the costs of the suit being paid, the comptroller, if he shall be satisfied that such omission was not willful, may, in his discretion, discontinue such suit.

#### Corporations, how assessed.

§ 31. The assessors shall assess corporations liable to taxation in their respective tax districts upon their assessment-rolls in the following manner:

1. In the first column the name of each

corporation, and under its name the amount of its capital stock paid in and secured to be paid in; the amount paid by it for real property then owned by it wherever situated; the amount of all surplus profits or reserve funds exceeding ten per centum of their capital, after deducting therefrom the amount of said real property and the amount of its stock, if any, belonging to the State and to incorporated literary and charitable institutions.

2. In the second column the quantity of real property owned by such corporation and situated within their tax district.

3. In the third column the actual value of such real property.

4. In the fourth column the amount of the capital stock paid in and secured to be paid in and of all of such surplus profits or reserve funds as aforesaid after deducting the sums paid out for all the real estate of the company wherever the same may be situated and then belonging to it, and the amount of stock, if any, belonging to the people of the State and to incorporated literary and charitable institutions.

Place of taxation. Tax L., § 11. Reports required. Tax L., § 27. Exemption from local assessment on personalty for State purposes. Tax L., § 202. See cases cited under Tax L., § 12.

"We think the assessment-roll may, therefore, be made up substantially as follows: In the first column insert the name of the corporation; in the second, the quantity of real estate in the town or ward; in the third column the assessed value of the real estate; and in the fourth column the value of the capital stock after making the exemptions and deductions required by section 3 referred to; and thus effect will be given to the manifest intention of the legislature." (The section 3 referred to is now section 12 of the Tax Law.) The court continues. "There is a practical difficulty yet to be referred to. It will not always be easy to determine the assessed value of the real estate to be deducted from the actual value of the capital stock. There can be no difficulty when the real estate is situated in the same ward or town where the capital stock is assessable, or even when it is situated in the same city or county. In most cases it will thus be situated, but if it is not, and is yet within the State, it will not be impracticable to ascertain its assessed value, from assessment-rolls always accessible. But if the real estate should be in another State or country, or if, for any other reason, its assessed value cannot be obtained, then as the best and nearest substitute for it, the price paid, as the presumed value, in the absence of proof of any other standard, may be taken as the assessable value." *People ex rel. Twenty-third St. R. R. Co. v. Comrs. of Taxes*, 95 N. Y. 554.

The commissioners of taxes are not justified in rejecting the sworn statement of the treasurer of a domestic corporation as false merely because the values given therein are less than those given for the same items in the preceding year. *People*

*ex rel. India Rubber Co. v. Barker* (Sp. T.), 16 Misc. Rep. 252.

A refusal by the treasurer of a corporation to answer questions put to him by the assessors, where the record does not disclose the question nor the subject to which they related, is no justification for erroneous assessment. *People ex rel. Sloan v. Barker*, 76 Hun, 454; s. c., 58 N. Y. St. Rep. 495; 27 N. Y. Supp. 1082.

### Railroads.

The assessors of a town in assessing property of a railroad company are limited to real estate, excluding personal property and franchises, and their assessment should be limited to the cost of reproduction of such real property. Any other method is improper. *People ex rel. Delaware, L. & W. R. R. Co. v. Clapp*, 152 N. Y. 490; 46 N. E. Rep. 842 (1897). The State tax commissioners comment upon this case in their report to the legislature of 1898, and suggest the absurdity of expecting town assessors to determine the cost of constructing a railroad in their town. Great diversity of assessment of railroad property has resulted.

The assessment of the property of a railroad corporation by town assessors will not be interfered with where their determination was not made capriciously or in an arbitrary manner. *Matter of Poughkeepsie v. Eastern Ry. Co.*, 46 N. Y. Supp. 884 (1897).

Where it appears that property of a town has been assessed at about 40 per cent. of its actual value, the court will reduce an assessment upon railroad property to an equivalent basis, to prevent inequality. *People v. Zoeller*, 15 N. Y. Supp. 684 (1891).

In determining the value of the real estate of a railroad for the purpose of taxation, the estimate should include its original cost, and cost of present reproduction, as well as its earning capacity. *People ex rel. D. & H. Canal Co. v. Ganley*, 29 N. Y. St. Rep. 130; s. c., 8 N. Y. Supp. 563 (1890).

An assessment against a railroad will not be held to be excessive on the ground that it is unable to pay the tax out of its net income, where such inability is the result of an excessive issue of stocks and bonds. *Brooklyn El. Co. v. Brooklyn* (Sp. T.), 16 Misc. Rep. 416 (1896).

The fact that the stock of a railroad company sells above par does not imply that there are taxable assets over and above its capital sufficient to pay its outstanding debts, for the reason that the value of its stock may be due to the value of its non-taxable franchises. *People ex rel. Brooklyn City R. R. Co. v. Neff*, 19 App. Div. 590 (1897).

### Telegraph and telephone companies.

The proper method of assessment of such real property is to take the cost of the articles, considering them land, which are in their nature personal property, and add to that cost the value of the interest in the land on which the poles stand and the value of the right to erect such poles based upon the cost which the company incurred in securing such right. The property is

not to be regarded as a part of a whole, nor as a complete telegraph line in operation. Its value for telegraph purposes, and its position with its connections, and its productive capacity, are not considerations entering into the value of the property under the acts. *People ex rel. W. U. Tel. Co. v. Dolan*, 126 N. Y. 166; s. c., 37 N. Y. St. Rep. 28; aff'd 11 N. Y. Supp. 35.

### Debts owing to non-residents of the United States, how assessed.

§ 34. Every agent in any county of a non-resident creditor having debts owing to him, taxable in any county of the State, shall annually, on or before June first, furnish to the county treasurer of the county where the debtor resides, a true and accurate statement verified by his oath, of such debts owing on the first day of May next preceding in each town or ward in such county. The county treasurer shall, immediately upon the receipt of such statement, make out and transmit to the assessors of every tax district in the county in which any such debtor resides a copy of so much of such statement as relates to the tax district of such assessors, with the name of the creditor. The assessors on receipt of such statement from the county treasurer shall, within the time in which they are required to complete the assessment-roll, enter therein the name of such non-resident creditor, and the aggregate amount due him in such tax district on the first day of May next preceding, in the same manner as other personal property is entered on the roll, adding the name of the debtor owing such debt. Any agent neglecting or refusing without good cause to furnish such statement to the county treasurer shall forfeit to the county in which the debtor resides the sum of five hundred dollars, recoverable by the district attorney, if the existence of such debts was known to the agent.

The note of the statutory revision commissioners attached to this section at the time of its passage is as follows:

"L. 1851, ch. 371, §§ 2-5; R. S. (8th ed.), 1084, without change of substance, except that the date for rendering the statement is changed from July 25th to June 1st.

"The act from which this section is derived (L. 1851, ch. 371) makes debts due to non-residents of the United States for the purchase of real property, taxable as personal property within the State. The act would seem to raise a serious question as to the jurisdiction of the State to assess non-tangible personal property, where the owner thereof resides without the State. There appears, however, to have been no authoritative decision of the courts of this State as to the power of the legislature to pass the act.

"Cooley lays down the rule broadly that 'Debts owing to foreign creditors by either corporations or individuals are not the subject of taxation. The creditor cannot be taxed, because he is not

within the jurisdiction, and the debts cannot be taxed in the debtors' hands, through any fiction of the law which is to treat them as being for this purpose the property of the debtor.' *Cooley on Taxes*, p. 22.

"The leading case upon the subject is reported in 15 Wall. 300, in which an attempt was made to tax in the State of Pennsylvania the bonds of a Pennsylvania railroad company, secured by mortgage, and held by non-residents of the State. The Supreme Court of the United States laid down the rule unequivocally that credits of that sort were not within the jurisdiction of the State, so as to render them subject to taxation; and again in *Kirkland v. Hotchkiss*, 100 U. S. 491, the Supreme Court laid down the reverse proposition 'that a debt for the purpose of taxation is situated at the domicile of the creditor, although secured by mortgage upon real estate situated in another State.'

"The Supreme Court of Ohio, in *Myers v. Seaberger*, 45 Ohio St. 232, held, 'that a loan of money secured by mortgage on real estate is a credit within the meaning of the statutes of this State, providing for taxation of property, and that where the creditor resides in another State, is not subject to taxation in this, although the securities are in the hands of an agent here who collects interest.'

"The State of Michigan has a law, however, which provides for the taxation of mortgages upon real property within the State, wherever and by whomsoever held. The Supreme Court of the State in *Common Council v. Assessors*, 91 Mich. 78 (1892), upheld the law upon the argument that the interest of the mortgagee was a tangible interest within the State, enjoying the protection of the laws of the State. The court attempts to distinguish the decision of the Supreme Court of the United States in 15 Wallace, on the ground that that case referred to the taxation of credits generally and not to an interest which the State could tax as real property within its jurisdiction.

"The law of 1851 has stood upon the statute books for so many years, apparently never having been seriously questioned, that the commissioners have deemed it best to include it within their revision, leaving to the legislature the responsibility of repealing it without re-enactment, if such a course is deemed desirable."

#### Notice of completion of assessment-roll.

§ 35. The assessors shall complete the assessment-roll on or before the first day of August, and make out one copy thereof, to be left with one of their number, and forthwith cause a notice to be conspicuously posted in three or more public places in the tax district, stating that they have completed the assessment-roll, and that a copy thereof has been left with one of their number at a specified place, where it may be seen and examined by any person until the third Tuesday of August next following, and that on that day they will meet at a time and place specified in the notice to review their assessments. In any city the notice shall conform to the requirements

of the law regulating the time, place and manner of revising assessments in such city. During the time specified in the notice the assessor with whom the roll is left shall submit it to the inspection of every person applying for that purpose.

After the completion of the roll, and the formal notice of that completion, assessors are without jurisdiction to change either the persons or property assessed, or the adjudged valuation of the latter, except upon complaint of the party aggrieved. *People ex rel. Chamberlain v. Forrest*, 96 N. Y. 544.

#### Hearing of complaints.

§ 36. The assessors shall meet at the time and place specified in such notice, and hear and determine all complaints in relation to such assessments brought before them, and for that purpose they may adjourn from time to time. Such complainants shall file with the assessors a statement, under oath, specifying the respect in which the assessment complained of is incorrect, which verification must be made by the person assessed or whose property is assessed, or by some person authorized to make such statement, and who has knowledge of the facts stated therein. The assessors may administer oaths, take testimony and hear proofs in regard to any such complaint and the assessment to which it relates. If not satisfied that such assessment is erroneous, they may require the person assessed, or his agent or representative, or any other person, to appear before them and be examined concerning such complaint, and to produce any papers relating to such assessment with respect to his property or his residence for the purpose of taxation. If any such person, or his agent or representative, shall willfully neglect or refuse to attend and be so examined, or to answer any material question put to him, such person shall not be entitled to any reduction of his assessments. Minutes of the examination of every person examined by the assessors upon the hearing of any such complaint shall be taken and filed in the office of the town or city clerk. The assessors shall, after said examination, fix the value of the property of the complainant and for that purpose may increase or diminish the assessment thereof.

A taxpayer who claims a reduction must attend upon the assessors in person, submit to an examination under oath, and subscribe to the answers, and an affidavit taken before a notary public without such attendance is not sufficient. *People ex rel. Mercer v. Maynard*, 7 Misc. Rep. 295; s. c., 58 N. Y. St. Rep. 546; 28 N. Y. Supp. 141 (1893).

The assessors have no power to reduce an assessment in case of non-compliance with the requirements of the statute, by the taxpayer upon the affidavit of his attorney alone. *Matter of Cor-*



wln, 64 Hun, 167; s. c., as *People ex rel. Corwin v. Assessors, etc.*, of Middletown, 46 N. Y. St. Rep. 148; 19 N. Y. Supp. 142 (1892).

In order to authorize a reduction of the assessor's valuation of the personal property of a corporation it must be made to appear that it exceeded the value of all the personal property after deducting the debts. *People ex rel. Parsons Mfg. Co. v. Moore*, 11 N. Y. St. Rep. 859 (1887).

In proceedings to reduce an assessment, the burden of showing overvaluation is on the owner. *People ex rel. Fargo v. Murphy*, 32 N. Y. St. Rep. 780; s. c., 10 N. Y. Supp. 377 (1890).

A railroad corporation failing to appear on grievance day and have the assessment corrected, loses its remedy to review the assessment by certiorari, and such failure is not excused by the fact that it relied on unofficial information that the assessment would be the same as in the preceding year. *People v. Adams*, 125 N. Y. 471; 27 N. E. Rep. 1075; s. c., 36 N. Y. St. Rep. 166 (1891); *People ex rel. Winans v. Dolan*, 126 N. Y. 166; s. c., 37 N. Y. St. Rep. 28; aff'g 11 N. Y. Supp. 35 (1891).

A statement rendered in behalf of a corporation upon an application to set aside its assessments which shows its debts exceed in amount the assessed value of its real estate and the value of its personal property, is not conclusive upon the commissioners, where no statement is made as to the actual value of the real property, and it appears that large dividends have been earned and paid, and a reference to former statements and assessments justify the conclusion reached by the commissioners. *People ex rel. Equitable Gas Light Co. v. Barker*, 144 N. Y. 94; 39 N. E. Rep. 13; 63 N. Y. St. Rep. 33; rev'g 81 Hun, 22; s. c., 62 N. Y. St. Rep. 563; 30 N. Y. Supp. 586 (1894).

Where a corporation presents evidence to the taxing officers as to the value of its assets, so full and complete as to establish the facts upon which its claim for reduction rests, and it is not contradicted by facts within their knowledge, and no good reason exists for questioning its truth, refusal to decide in accordance with such evidence is legal error. *People ex rel. German, etc., Co. v. Barker*, 75 Hun, 6; s. c., 57 N. Y. St. Rep. 1; 26 N. Y. Supp. 971 (1894).

Assessors have the right to correct an assessment (except to increase an estimate of property after the roll has been deposited with one of their number for inspection) at any time before the roll is delivered to the supervisor. *People ex rel. Lorillard v. Supervisors of Westchester*, 15 Barb. 607 (1853).

A verbal application to assessors to reduce the assessment made on a day appointed for a hearing for grievances and considered without objection and acted upon by the board,—held, a sufficient application, if one was necessary, before bringing proceedings by certiorari to review the assessment. *People ex rel. Eckerson v. Christie*, 115 N. Y. 158; 21 N. E. Rep. 1024 (1889).

#### Correction and verification of tax-roll.

§ 37. When the assessors, or a majority of them, shall have completed their roll, they shall severally appear before any officer of

their county, authorized by law to administer oaths, and shall severally make and subscribe before such officer an oath in the following form: "We, the undersigned, do severally depose and swear that we have set down in the foregoing assessment-roll all the real estate situated in the tax district in which we are assessors, according to our best information; and that, with the exception of those cases in which the value of the said real estate has been changed by reason of proof produced before us, we have estimated the value of the said real estate at the sums which a majority of the assessors have decided to be the full value thereof; and, also, that the said assessment-roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in such roll over and above the amount of debts due from such persons, respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, at the full value thereof, according to our best judgment and belief," which oath shall be written or printed on said roll, signed by the assessors and certified by the officer.

A substantial compliance of the affidavit of assessors with the statute is sufficient, *Buffalo & State Line R. R. Co. v. Supervisors of Erie*, 48 N. Y. 93; *Chamberlain v. Taylor*, 36 Hun, 24; *Rome, Watertown, etc., R. R. Co. v. Smith*, 39 Hun, 332; aff'd, 101 N. Y. 684; *People ex rel. Rome, Watertown, etc., R. R. Co. v. Jones*, 43 Hun, 131; but a material deviation from the form prescribed is fatally defective. *Beach v. Hayes*, 58 How. Pr. 17; *Hinekey v. Cooper*, 22 Hun, 253; *Shattuck v. Bascom*, 105 N. Y. 39; 12 N. E. Rep. 283; *Lord v. Cooper*, 19 App. Div. 535. Omission of venue to affidavit, immaterial. *Colman v. Shattuck*, 62 N. Y. 348. Verification by two assessors does not invalidate. *Bellinger v. Gray*, 51 N. Y. 610. Verification at any time before the roll has passed under the action of the supervisors is sufficient. *Rome, Watertown, etc., R. R. Co. v. Smith*, 39 Hun, 332. Assessment-roll, although made up in three parts, on grievance day, is valid if afterward the parts are engrossed in a single roll and duly verified. *People ex rel. D., L. & W. R. R. Co. v. Clapp*, 64 Hun, 547; 46 N. Y. St. Rep. 509. The assessors cannot impeach their own attestation. *Brooklyn El. R. R. Co. v. Brooklyn*, 16 Misc. Rep. 416.

#### Filing of roll and notice thereof.

§ 38. The assessment-roll when thus completed and verified shall be filed on or before September first, in the office of the town or city clerk, there to remain for fifteen days for public inspection. The assessors shall forthwith cause a notice to be posted conspicuously in at least three public places in the tax district and to be published in one or more newspapers, if any, published in the town or city, that such assessment-roll has

been finally completed and stating that it has been so filed and will be there open to public inspection. At the expiration of such fifteen days, the town or city clerk shall deliver such roll to a supervisor of the tax district embraced therein.

**Assessors to apportion valuation of railroad, telegraph, telephone, or pipe-line companies between school districts.**

§ 39. The assessors of each town in which a railroad, telegraph, telephone or pipe-line company is assessed upon property lying in more than one school district therein, shall, within fifteen days after the final completion of the roll, apportion the assessed valuation of the property of each of such corporations among such school districts. Such apportionment shall be signed by the assessors or a majority of them, and be filed with the town clerk within five days thereafter, and thereupon the valuation so fixed shall become the valuation of such property in such school district for the purpose of taxation. In case of failure of the assessors to act, the supervisor of the town shall make such apportionment on request of either the trustees of any school district or of the corporation assessed. The town clerk shall furnish the trustees a certified statement of the valuations apportioned to their respective districts. In case of any alteration in any school district affecting the valuation of such property, the officer making the same shall fix and determine the valuations in the districts affected for the current year.

**Statement of taxes upon certain corporations by clerk of supervisors.**

§ 57. The clerk of each board of supervisors shall, within five days after the tax warrant is completed, deliver to the county treasurer, a statement showing the names, valuation of property and the amount of tax of every railroad, corporation and telegraph, telephone and electric-light line in each tax district in the county, and on refusal or neglect so to do, shall forfeit to the county the sum of one hundred dollars, to be sued for by the district attorney in the name of the county.

**Statement of valuation to be forwarded to comptroller.**

§ 58. The clerk of each board of supervisors shall, on or before the second Monday in December, transmit to the comptroller, in the form to be prescribed by such comptroller, a certificate or return of the aggregate assessed and equalized valuation of the real and personal estate in each tax district as the valuation of such real estate has been corrected by such board, and the amount of tax assessed thereon for town, city, school, county and State purposes. Also the names of the several in-

corporated companies liable to taxation in such county, the nature of their business, the amount of the capital stock paid in and secured to be paid in by each, the amount of real and personal property of each as put down by the assessors, or by it, the amount of taxes assessed on each, and the amount of personal property on which each such corporation is exempt on account of the payment of State taxes on its capital. In the city of New York such report shall be made by the clerk of the board of aldermen, and for the purpose of making such report he may require any department or board of such city to furnish the necessary information.

**Notice by collector.**

§ 70. Every collector, upon receiving a tax-roll and warrant, shall forthwith cause notice of the reception thereof to be posted in five conspicuous public places in the tax district, specifying one or more convenient places in such tax district, where he will attend from nine o'clock in the forenoon until four o'clock in the afternoon, at least three days, and if in a city, at least five days, in each week for thirty days from the date of the notice, which shall be the date of the posting or first publication thereof, which day shall be specified in such notice, for the purpose of receiving the taxes assessed upon such roll. The collector shall attend accordingly, and any person may pay his taxes to such collector at the time and place so designated, or at any other time or place. In a city, the notice in addition to being posted shall be published once in each week, for two weeks successively, in a newspaper published in such city.

**Collection of taxes.**

§ 71. After the expiration of such period of thirty days, the collector shall call, at least once, on every person taxed upon such roll, whose taxes are unpaid, at his usual place of residence, if he is an actual inhabitant of such tax district, and demand payment of the taxes charged to him on his property. If any person shall neglect or refuse to pay any tax imposed on him, the collector shall levy upon any personal property in the county belonging to or in the possession of any person who ought to pay the tax, and cause the same to be sold at public auction for the payment of such tax, and the fees and expenses of collection; and no claim of property to be made thereto by any other person shall be available to prevent such sale. Public notice of the time and place of sale of the property to be sold shall be given by posting the same in at least three public places in the tax district where the sale is to be made, at least six days previous thereto. If the proceeds of such sale shall be more than the amount of such tax,

the fees of the collection and the expenses of the sale, the surplus shall be paid to the person against whom the tax was assessed. If any other person shall claim the surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for the payment of whose tax the sale was made, such surplus shall be paid to such other person. If such claim be contested by the person for the payment of whose tax the property was sold, such surplus shall be paid over by the collector to the supervisor of the town, who shall retain the same until the rights of the parties thereto shall be determined by due course of law, or by agreement in writing made by them and filed with the supervisor.

**Payment of taxes by railroad and certain other corporations.**

§ 73. Any railroad, telegraph, telephone or electric-light company may, within thirty days after receipt of notice by the county treasurer from the clerk of the board of supervisors, pay its tax, with one per centum fees, to the county treasurer, who shall credit the same with such fees to the collector of the tax district, unless otherwise required by law. If not so paid the county treasurer shall notify the collector of the tax district where it is due, and he shall then proceed to collect under his warrant. Until such notice from the treasurer the collector shall not enforce payment of such taxes, but may receive the same, with the fees allowed by law, at any time.

**Enforcement of tax against telegraph, telephone and electric-light lines.**

§ 74. Collection of tax against a telegraph, telephone or electric light line may be enforced by sale of the instruments and batteries connected with such line, and in case there is not sufficient personal property, together with such instruments and batteries, to pay such tax and the percentage due the collector, he shall return a statement thereof to the county treasurer as other unpaid taxes are returned, and the county treasurer shall proceed to sell such part of the line in the tax district where the tax was levied as may be necessary to satisfy the unpaid taxes and percentage, in the manner now provided by law for the sale of lands on execution, and upon such sale shall execute to the purchaser a conveyance of such part of said line, and the purchaser shall thereupon become the owner thereof. Nothing herein contained shall be construed to prevent collection of such taxes by any procedure now provided by law.

**Organization tax.**

§ 180. Every stock corporation incorporated under any law of this State shall pay to the State treasurer a tax of

one-eighth of one per centum upon the amount of capital stock which the corporation is authorized to have, and a like tax upon any subsequent increase. Such tax shall be due and payable upon the incorporation of such corporation or upon the increase of its capital stock. Except in the case of a railroad corporation, neither the secretary of State nor county clerk shall file any certificate of incorporation or article of association, or give any certificate to any such corporation or association until he is furnished a receipt for such tax from the State treasurer, and no stock corporation shall have or exercise any corporate franchise or powers, or carry on business in this State until such tax shall have been paid. In case of the consolidation of existing corporations into a corporation, such new corporation shall be required to pay the tax hereinbefore provided for only upon the amount of its capital stock in excess of the aggregate amount of capital stock of said corporations. This section shall not apply to State and national banks or to building, mutual loan, accumulating fund and co-operative associations. A railroad corporation need not pay such tax at the time of filing its certificate of incorporation, but shall pay the same before the railroad commissioners shall grant a certificate, as required by the railroad law, authorizing the construction of the road as proposed in its articles of association, and such certificate shall not be granted by the board of railroad commissioners until it is furnished with a receipt for such tax from the State treasurer. (Thus amended by L. 1897, ch. 369.)

Revisers' note. L. 1886, ch. 143; R. S. (8th ed.), 1159, as am'd by L. 1892, ch. 660; R. S. (8th ed.), supp. 3257; Banking L., § 187, as am'd by L. 1894, ch. 705, without change of substance.

The reincorporation of a manufacturing corporation under the Business Corporations Law, held not to subject corporation to the organization tax. *Matter of Consolidated Kansas City Smelting & Refining Co.*, 13 App. Div. 50 (1897); overruling *Matter of New York & Suburban Investment Co.*, 40 N. Y. St. Rep. 133. The provision of the section in relation to tax on excess of capital in case of consolidation conforms the statute to the decision of the Court of Appeals in *People ex rel. Eickemeyer Field Co. v. Rice*, 138 N. Y. 614; 33 N. E. Rep. 1083; 51 N. Y. St. Rep. 93; aff'g 49 Id. 46.

It was held in the cases of *People v. N. Y. C. & St. Louis R. R. Co.*, 129 N. Y. 474; 29 N. E. Rep. 959; and *People v. Fitchburg R. R. Co.*, id. 654, both decided prior to the amendment of 1892, that where consolidation of a domestic corporation was effected with a corporation of a foreign State, the new corporation was not subject to the tax. The same rule would probably apply as to the excess of capital of the new corporation over that of the constituent corporations.



A railroad corporation reorganizing under L. 1874, ch. 430, as am'd by L. 1876, ch. 444 (now section 3 of Stock Corporation Law), held subject to the tax. *People ex rel. Schurz v. Cook*, 110 N. Y. 443; 18 N. E. Rep. 113; *People ex rel. Mertens v. Cook*, id.

#### License tax on foreign corporations.

§ 181. Every foreign corporation, joint-stock company or association, except banking, fire, marine, casualty and life insurance companies, and corporations wholly engaged in carrying on manufactures in this State, co-operative fraternal insurance companies and building and loan associations, authorized to do business under the general corporation law, shall pay to the State treasurer, for the use of the State, a license fee of one-eighth of one per centum for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this State, to be computed upon the basis of the capital stock employed by it within this State during the first year of carrying on its business in this State. No action shall be maintained or recovery had in any of the courts in this State by such foreign corporation without obtaining a receipt for the license fee hereby imposed within thirteen months after beginning such business within the State.

Revisers' note. L. 1895, ch. 240.

This section embodies the substance of L. 1895, ch. 240, as to corporations hereafter commencing business within the State. It is not wise to repeal chapter 240 until corporations that have heretofore commenced business shall have paid the tax imposed thereby.

#### LAWS 1895, CHAP. 240.

#### AN ACT to provide for licensing foreign corporations.

Section 1. Every foreign corporation except banking, fire, marine, casualty and life insurance companies, and corporations wholly engaged in carrying on manufactures in this State, co-operative fraternal insurance companies, endowment orders and building and loan associations, now authorized to do business in this State, under the provisions of chapter six hundred and eighty-seven of the laws of eighteen hundred and ninety-two, entitled "An act to amend the general corporation law," shall pay to the State treasurer for the use of the State, a license fee of one-eighth of one per centum for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this State, on the first day of December, eighteen hundred and ninety-five, to be computed upon the basis of the amount of capital stock employed by it within this

State during the year preceding that date, and every such foreign corporation which shall hereafter be authorized to do business in this State shall pay a like license fee for the privilege, to be computed upon the basis of the capital stock employed by it within this State for its business during the first year of carrying on its business in this State. The amount of capital upon which such taxes shall be paid shall be fixed by the comptroller, who shall have the same authority to examine the books and records in this State of such foreign corporations, and the employes thereof, and the same power to issue his warrant for the collection of such taxes, as he now has with regard to domestic corporations. Every such foreign corporation hereafter authorized to do business in this State shall, before receiving the certificate of authority provided by law, pay to the State treasurer, for the use of the State, the tax hereinbefore provided for. No action shall be maintained or recovery had in any of the courts of this State by such foreign corporation doing business in this State, without obtaining the certificate of authority prescribed by law, and a receipt for the license fee hereby imposed.

This act is explained by the revisers' note to section 181 of the Tax Law.

#### Franchise tax on corporations.

§ 182. Every corporation, joint-stock company or association incorporated, organized or formed under, by or pursuant to law in this State, shall pay to the State treasurer annually, an annual tax to be computed upon the basis of the amount of its capital stock employed within this State and upon each dollar of such amount, at the rate of one-quarter of a mill for each one per centum of dividends made and declared upon its capital stock during each year ending with the thirty-first day of October, if the dividends amount to six or more than six per centum upon the par value of such capital stock. If such dividend or dividends amount to less than six per centum on the par value of the capital stock, the tax shall be at the rate of one and one-half mills upon such portion of the capital stock at par as the amount of capital employed within this State bears to the entire capital of the corporation. If no dividend is made or declared, the tax shall be at the rate of one and one-half mills upon each dollar of the appraised capital employed within the State. If such corporation, joint-stock company or association shall have more than one kind of capital stock, and upon one of such kinds of stock a dividend or dividends amounting to six, or more than six per centum, upon the par value thereof, has been made or declared, and upon the other no dividend has been made or declared, or the dividend or dividends made or declared thereon, amount to less than six per centum upon the par

value thereof, then the tax shall be at the rate of one-quarter of a mill for each one per centum of dividends made or declared upon the capital stock upon the par value of which the dividend or dividends made or declared amount to six or more than six per centum, and in addition thereto a tax shall be charged at the rate of one and one-half mills upon every dollar of the valuation made in accordance with the provisions of this act of the capital stock upon which no dividend was made or declared, or upon the par value of which the dividend or dividends made or declared did not amount to six per centum. Every corporation, joint-stock company or association organized, incorporated or formed under the laws of any other State or country, shall pay a like tax for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this State, to be computed upon the basis of the capital employed by it within this state.

#### Source of section.

This section is derived from L. 1880, ch. 542, § 3, as am'd by L. 1882, ch. 361, and L. 1890, ch. 522.

#### Change of system as to corporations declaring less than six per cent dividend.

As enacted in 1896, it changed the system of taxing corporations which declare a dividend of less than 6 per cent. Theretofore such corporations were taxed one and one-half mills upon each dollar of the appraised capital employed within the State. Under this section a tax of one and one-half mills is imposed upon such portion of the capital stock at par as the amount of capital employed within the State bears to the entire capital of the corporation. It would seem that for the purpose of imposing such tax the term "capital stock" is to be given the meaning of the aggregate shares issued, contrary to the meaning heretofore given to the term in taxing statutes, viz., the property of the corporation. The system, in view of this construction, is as follows: A corporation has an aggregate capital stock issued of \$100,000. Its capital (or property) is worth when appraised \$80,000. Of this capital \$40,000 worth is employed within the State — one-half of the entire capital. The corporation will then be subject to tax on one-half its capital stock at par, or \$50,000.

Under the provisions of the former law, a corporation which has declared dividends during the year amounting to 5-3-4 per cent. was held subject to a tax at the rate of one and one-half mills on each dollar of the value of its stock, although the stock is valued above par and the result is the imposition of a larger tax than if the corporation had paid 6 per cent. dividends and been taxed at the rate of one-quarter mill for each 1 per cent. dividend under the prior clause of the statute. *People v. D. & H. Canal Co.*, 54 Hun, 598; s. c., 27 N. Y. St. Rep. 624; 7 N. Y. Supp. 890; aff'd, 121 N. Y. 666; 24 N. E. Rep. 1093 (1889).

#### Act constitutional.

The act has been held constitutional under the State and Federal Constitutions. *People v. Home Ins. Co.*, 92 N. Y. 328 (1883); *People v. Equitable Trust Co. of New London*, 96 N. Y. 387 (1884); *People v. Gold & Stock Tel. Co.*, 98 N. Y. 67 (1885); *People ex rel. Southern Cotton Oil Co. v. Wemple*, 131 N. Y. 64; 29 N. E. Rep. 1002 (1892); *Home Ins. Co. v. New York*, 134 U. S. 599.

#### Use of terms.

The words "capital stock" refer to the property of the corporation contributed by the stockholders or otherwise obtained by it and not the shares of stock. *People ex rel. Axe & Tool Co. v. Roberts*, 82 Hun, 313; s. c., 63 N. Y. St. Rep. 574; 31 N. Y. Supp. 245.

By the term "corporate franchise or business," in a statute taxing such franchise, is meant the right or privilege of being a corporation — that is, of doing business in a corporate capacity. *Home Ins. Co. v. New York*, 134 U. S. 594.

#### Objection of unequal or double taxation.

This objection will not avail to defeat the statute. *People v. Home Ins. Co.*, 92 N. Y. 328 (1892). The tax being for the exclusive benefit of the State, it does not interfere with the power of local authorities to tax for municipal and county purposes. *People ex rel. Eastern Trans. Co. v. Comrs. of Taxes*, 26 Hun, 446 (1882). But see exemption provided by section 202, and exemption of shares, § 4, subd. 16.

The property of shareholders in their shares, and that of the corporation in its capital stock, are distinct property interests, and may both be taxed, where such is the clear intent. *New Orleans v. Houston*, 119 U. S. 265.

#### Basis of tax.

The basis of tax is the capital of the corporation employed within the State, and not the whole Trust Co. of New London, 96 N. Y. 387 (1883); capital of the corporation. *People v. Equitable People v. Horn Silver Mining Co.*, 105 N. Y. 76; 11 N. E. Rep. 155 (1887); *People ex rel. Am. Contracting, etc., Co. v. Wemple*, 129 N. Y. 558 (1892); 29 N. E. Rep. 812; *People ex rel. Seth Thomas Clock Co. v. Wemple*, 133 N. Y. 323; 31 N. E. Rep. 238 (1892); *People ex rel. Edison El. Lt. Co. v. Campbell*, 138 N. Y. 543; 34 N. E. Rep. 370 (1893); *People ex rel. Edison El. Lt. Co. v. Wemple*, 148 N. Y. 690 (1896); *People ex rel. Chicago Junction, etc., Co. v. Roberts*, 154 N. Y. 1; 47 N. E. Rep. 974 (1897).

So far as it imposes a tax upon corporate franchises the operation of the statute must be confined to domestic corporations. As to foreign corporations the tax is imposed solely upon business. *People v. Equitable Trust Co. of New London*, 96 N. Y. 387 (1884); *People ex rel. Am. Contracting, etc., Co. v. Wemple*, 129 N. Y. 558; 29 N. E. Rep. 812 (1892).

The statute of New York does not require that the whole business of a foreign corporation shall be done within the State in order to subject it to

## State taxation — Tax L., § 182.

the taxing power of the State. *Horn Silver Mining Co. v. New York*, 143 U. S. 305.

The question as to whether a foreign corporation does business in this State so as to render it taxable must be determined from the actual character of the business carried on and not from the existence of any unexercised powers reserved to it by its contracts; for the material question is whether it has, in fact, done business within the State, and if so, what was its nature, character and extent, and not whether it possesses the natural or contractual right to carry on such business. *People v. Bell Telephone Co.*, 117 N. Y. 241; 22 N. E. Rep. 1057; 27 N. Y. St. Rep. 459; rev'g 50 Hun, 114; s. c., 19 N. Y. St. Rep. 748; 3 N. Y. Supp. 733.

There must be some property or business done within the State to justify a tax by the State comptroller upon a domestic corporation, and some evidence to show how much capital is employed. Where it has removed its business without the State, it is error to tax it upon its entire capital stock, part of which is employed elsewhere, and if it has no property or business within the State there is no basis on which to compute the tax. *People ex rel. Davis-Colby Co. v. Campbell*, 66 Hun, 146; s. c., 48 N. Y. St. Rep. 817; 21 N. Y. Supp. 7 (1892).

### Foreign corporation must do business and employ capital.

The courts have heretofore decided that to tax a foreign corporation under L. 1880, ch. 542, two concurring conditions were necessary, namely: First, that the corporation shall be doing business within the State; and, second, employing capital within the State. *People ex rel. Harlan & Hollingsworth Co. v. Campbell*, 139 N. Y. 68; 34 N. E. Rep. 753; *People ex rel. Chicago Junction, etc., Co. v. Roberts*, 154 N. Y. 1; 47 N. E. Rep. 974.

The act of 1880 imposed a tax upon all corporations "doing business in this State," and the basis of the tax was the capital employed within the State. The act of 1896 changed the language of the former law. The tax upon domestic corporations is declared to be "upon its capital employed within the State," while the tax on foreign corporations is "upon the capital employed within the State," with the further declaration that it is "for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this State." The language "doing business in this State," contained in the act of 1880, as amended, is omitted from section 182. Query, has the change in language effected a change in substance?

### Cannot exceed amount of capital stock.

The basis of a tax imposed on the business or franchise of a foreign corporation cannot exceed the amount of the capital stock authorized by its charter. *People ex rel. Advertising Co. v. Roberts*, 4 App. Div. 288; aff'd, 151 N. Y. 621; 45 N. E. Rep. 1134; *People ex rel. International Contracting Co. v. Roberts*, 27 App. Div. 400 (1898).

### Effect of capital being invested in exempt property.

The tax being imposed upon franchises and not upon property, the fact that dividends, a portion of which are derived from securities exempt from taxation, furnish the basis for computing the amount of the tax, does not invalidate the statute. Accordingly it has been so held as to an investment of capital in United States securities. *People v. Home Ins. Co.*, 92 N. Y. 328 (1883); *Home Ins. Co. v. People*, 134 U. S. 594.

In *People ex rel. Edison El. Lt. Co. v. Campbell*, 138 N. Y. 543; 34 N. E. Rep. 370 (1893), the court held that patent rights owned by a domestic corporation were properly estimated as a part of its capital employed within the State. See also patent right case of *People ex rel. Illuminating Co. v. Wemple*, 39 N. Y. St. Rep. 605 (1891); rev'd on other grounds, 129 N. Y. 664.

### Sales by sample.

Sales by sample made within the State do not constitute employing capital within the State, *People ex rel. Seth Thomas Clock Co. v. Wemple*, 133 N. Y. 323; 31 N. E. Rep. 238 (1892); *People ex rel. Washington Mills Co. v. Roberts*, 8 App. Div. 201 (1896); aff'd, 151 N. Y. 619; 45 N. E. Rep. 1134; *People ex rel. Smith Co. v. Roberts*, 27 App. Div. 455 (1898); *People ex rel. Soda Fountain Co. v. Roberts*, 29 App. Div. 585 (1898); but if the goods are brought within the State before sale, the capital is employed here. *People v. Horn Silver Mining Co.*, 105 N. Y. 76; 11 N. E. Rep. 155 (1887); *People ex rel. Parke, Davis & Co. v. Roberts*, 91 Hun, 158 (1895); *People ex rel. Southern Cotton Oil Co. v. Wemple*, 131 N. Y. 64; 29 N. E. Rep. 1002 (1892); *People ex rel. Blackinton Co. v. Roberts*, 4 App. Div. 388 (1896).

### Sales by commission merchant.

Sales of goods in this State by a commission merchant at a price fixed by a foreign corporation, or in fulfillment of orders approved by a foreign corporation, do not constitute "doing business within the State." *People ex rel. Southern Cotton Oil Co. v. Roberts*, 25 App. Div. 13 (1898).

### Maintaining an office.

A corporation which merely maintains an office within the State in charge of an agent, for the convenience of the corporation and its patrons, does not employ capital within the State. The office furniture cannot fairly be considered capital. *People ex rel. Harlan & Hollingsworth Co. v. Campbell*, 139 N. Y. 68; 34 N. E. Rep. 753 (1893); *People ex rel. Seth Thomas Clock Co. v. Wemple*, 133 N. Y. 323; 31 N. E. Rep. 238; *People ex rel. Washington Mills Co. v. Roberts*, 8 App. Div. 201; aff'd, 151 N. Y. 619; 45 N. E. Rep. 1134; *People ex rel. Chicago Junction, etc., Co. v. Roberts*, 154 N. Y. 1; 47 N. E. Rep. 974 (1897); *People ex rel. Kellogg v. Roberts*, 30 App. Div. 150 (1898); *People ex rel. Smith Co. v. Roberts*, 27 App. Div. 455 (1898).



### Where corporation is engaged in interstate commerce.

The fact that a corporation is engaged in interstate, as well as State commerce, does not preclude the imposition of the tax, if the corporation is doing business and employing capital within the State, and in this respect there is no distinction between domestic and foreign corporations. *People ex rel. Postal Tel. Co. v. Campbell*, 70 Hun, 507; 53 N. Y. St. Rep. 790 (1893); *People ex rel. Southern Cotton Oil Co. v. Wemple*, 131 N. Y. 64; 29 N. E. Rep. 1002; 42 N. Y. St. Rep. 632 (1892), and cases cited; *People ex rel. Penn. R. R. Co. v. Wemple*, 138 N. Y. 1; 33 N. E. Rep. 720; 51 N. Y. St. Rep. 702 (1893); *People ex rel. Parke, Davis & Co. v. Roberts*, 91 Hun, 158 (1895).

A State has power to tax all property having a situs within its limits, whether employed in interstate commerce or not. *Ficklen v. Taxing District*, 145 U. S. 1.

There is nothing in the United States Constitution which prevents a State from taxing personal property within its jurisdiction employed in interstate or foreign commerce. *Palace Car Co. v. Pennsylvania*, 141 U. S. 18.

A tax levied only upon the franchise or business of a foreign corporation is not a tax on interstate commerce. *Mining Co. v. New York*, 143 U. S. 305.

A tax upon the business of an express company done within the State is not a tax upon interstate commerce, although the company is also engaged in business between the States. *Pacific Express Co. v. Seibert*, 142 U. S. 339.

The cars of a car company let to railroad corporations, and employed exclusively in interstate commerce, may be taxed in a State, and the tax apportioned among the counties of the State, according to mileage of the railroad in each county, and levied in those counties. *Palace Car Co. v. Hayward*, 141 U. S. 36.

Although the property of a telegraph company situated within a State may be taxed therein, as all other property is taxed, its business of an interstate character cannot be taxed. *Leloup v. Mobile*, 127 U. S. 640.

Where a general tax is laid on all property alike, it cannot be construed as a duty on exports when falling upon goods not then intended for exportation though they should happen to be exported afterward. The taxing of goods coming from other States, as such, or by reason of their so coming, would be a regulation of interstate commerce; but if, after their arrival, they are subjected to a general tax on all property alike, this does not constitute such a regulation. *Brown v. Houston*, 114 U. S. 633 (1885).

### Stock and bonds.

Stock of a foreign corporation organized and situated without the State, acquired by a domestic corporation in exchange for patent rights, is not taxable as capital employed within the State. *People ex rel. Edison El. Lt. Co. v. Campbell*, 138 N. Y. 543; 34 N. E. Rep. 370; 53 N. Y. St. Rep. 184 (1893); *People ex rel. Edison El. Lt. Co. v. Wemple*, 148 N. Y. 690 (1896); rev'g 63 Hun, 444 (1892). Stock of a domestic corporation organized

and doing business in this State, acquired by a domestic corporation in exchange for patent rights, is taxable as capital employed within the State. *People ex rel. Edison El. Lt. Co. v. Campbell*, supra. Bonds of a foreign corporation, it seems, acquired by a domestic corporation in exchange for patent rights are taxable as capital employed within the State. *Id.* Such bonds are presumably held at its office in this State, and such bonds, as well as all choses in action, unless kept, employed or used outside of the State, have their situs at the domicile of the owner, *Id.*; but a foreign corporation whose capital is wholly invested in the stock and bonds of an independent foreign corporation doing business wholly out of the State, and whose whole income is derived from such investment, is not taxable on capital employed within the State because it maintains an office in New York, has a bank account there and mails checks to its stockholders in the State. *People ex rel. Chicago Junction, etc., Co. v. Roberts*, 154 N. Y. 1; 47 N. E. Rep. 974 (1897); rev'g 90 Hun, 474 (1895). The profits or surplus earnings of a foreign corporation are not taxable as capital employed within the State. *Id.*

A bond and mortgage company of another State, which maintains an office in this State, together with a stock of securities which it offers for sale, and deposits the proceeds of such sales in a New York bank, which proceeds are subsequently sent out of the State to be reinvested, is subject to taxation on its capital employed within the State, which is represented by its bank account, the amount paid for salaries and rentals, and the securities through which it transacts business, less what may be deemed income. *People ex rel. N. E. Loan Co. v. Roberts*, 25 App. Div. 16 (1898).

### Investment of surplus by foreign corporation.

The surplus of a foreign corporation merely invested in real estate within the State, but not actively employed in its ordinary business is not capital stock employed within the State. *People ex rel. Singer Mfg. Co. v. Wemple*, 150 N. Y. 46; 44 N. E. Rep. 787 (1896); aff'g 78 Hun, 68. The decision even goes further and suggests that if the capital were so invested, it would not be taxable. The above case is followed in *People ex rel. U. V. Copper Co. v. Roberts*, 156 N. Y. 585 (Oct., 1898); rev'g 25 App. Div. 89; the court holding that stock and bonds purchased by a domestic corporation, with its surplus, which it might have distributed as dividends, were not taxable.

### Capital invested in unproductive property.

A domestic corporation whose entire capital was invested in an island, consisting of unimproved swamp land, is not taxable. *People ex rel. Hydraulic Co. v. Roberts*, 30 App. Div. 180 (1898); and the court cites *People ex rel. Singer Mfg. Co. v. Wemple*, 150 N. Y. 46; 44 N. E. Rep. 787; stating that such case held, that as to a foreign corporation money invested in real estate here, whether capital or surplus, was not taxable, if the real estate is not employed in its ordinary business.

**Special partnership.**

A foreign corporation employs its capital in this State if it becomes a special partner in a limited partnership. *People ex rel. Badische Anilin & Soda Fabrik v. Roberts*, 152 N. Y. 59; 46 N. E. Rep. 161 (1897).

**Capital deposited or invested in another State.**

It seems that the capital of a surety company deposited as securities in other States for those doing business with it in those States is not employed without the State so as to exempt it from taxation here. *People ex rel. Am. Surety Co. v. Campbell*, 64 Hun, 417; s. c., 46 N. Y. St. Rep. 228; 19 N. Y. Supp. 652 (1892).

Capital of a domestic corporation invested in real estate in another State, and in United States bonds deposited under a deed of trust, in another State, and with a finance minister in a foreign country, to enable the corporation to carry on its business in such States and country,—held, not to be capital employed within this State, although the income of the bonds was received and used in New York and all the property was subject to the claims of all creditors. *People ex rel. Am. Surety Co. v. Campbell*, 74 Hun, 101; s. c., 55 N. Y. St. Rep. 881; 26 N. Y. Supp. 462 (1893).

**Tax; how computed.**

The tax is to be computed upon the basis of dividends made and declared upon the capital stock of the corporation—not upon dividends earned within the State, and apportioned upon capital employed within the State, *People v. Equitable Trust Co.*, 96 N. Y. 387 (1884); *People v. Horn Silver Mining Co.*, 105 id. 76; 11 N. E. Rep. 155 (1887); *People ex rel. New England D. Meat & Wool Co. v. Roberts*, 155 N. Y. 408, 415 (1898); nor upon dividends declared upon capital not invested in exempt property. *People v. Home Ins. Co.*, 92 N. Y. 328 (1883); *Home Ins. Co. v. People*, 134 U. S. 594. Being computed upon the basis of the dividends declared the tax is dependent upon the business prosperity of the corporation and not upon the value of the corporate property. *People ex rel. Staten Island Rapid Transit Co. v. Roberts*, 4 App. Div. 334 (1896).

**Limitation of actions.**

As to when Statute of Limitations begins to run against a tax assessed by the comptroller, see *People ex rel. N. Y., L. & I. Co. v. Roberts*, 157 N. Y. 70 (1898).

**Certain corporations exempt from tax on capital stock.**

§ 183. Banks, savings banks, institutions for savings, insurance or surety corporations, laundry corporations, manufacturing corporations to the extent only of the capital actually employed in this State in manufacturing, and in the sale of the product of such manufacturing, mining cor-

porations wholly engaged in mining ores within this State, agricultural and horticultural societies or associations, and corporations, joint-stock companies or associations operating elevated railway or surface railroads not operated by steam, or formed for supplying water or gas for electric or steam heating, lighting or power purposes, and liable to a tax under sections one hundred and eighty-five and one hundred and eighty-six of this chapter, shall be exempt from the payment of the taxes prescribed by section one hundred and eighty-two of this chapter. This exemption shall not be construed to include title guaranty or trust companies. (Thus amended by L. 1897, ch. 785.)

This section is derived from L. 1881, ch. 361, § 3, as am'd by L. 1890, ch. 522. Prior to the revision of 1896 a corporation was not exempt unless "wholly engaged" in manufacturing within the State. If any portion of the capital employed within the State was employed in general business the entire capital employed within the State was subject to assessment, although by far the larger portion was employed in manufacturing. The Court of Appeals recognized the harshness of this inevitable construction in *People ex rel. Western Electric Co. v. Campbell*, 145 N. Y. 587; 40 N. E. Rep. 239 (1895); aff'g 80 Hun, 466; and suggested that "it was a subject to be brought to the attention of the legislature." Section 183 accordingly exempts a manufacturing corporation "to the extent only of the capital actually employed in this State." The following decisions indicate what constitutes manufacturing within the State.

A corporation for manufacturing and supplying gas was held to be a manufacturing corporation before the amendment of the act of 1880, establishing an independent system for the taxation of such corporations. *Nassau Gas Light Co. v. City of Brooklyn*, 89 N. Y. 409 (1882); aff'g 25 Hun, 567 (1881).

A corporation engaged in furnishing electricity for light and power was also, prior to the amendment of 1889, held to be exempt as a manufacturing corporation. *People ex rel. Brush Electric Co. v. Wemple*, 129 N. Y. 543; 29 N. E. Rep. 808; 42 N. Y. St. Rep. 272 (1892); *People ex rel. Edison Illuminating Co. v. Wemple*, 129 N. Y. 664; 29 N. E. Rep. 812; 42 N. Y. St. Rep. 280 (1892); rev'g 61 Hun, 53 (1892); *People ex rel. Edison Electric Light Co. v. Campbell*, 88 Hun, 527; 68 N. Y. St. Rep. 746 (1895).

A corporation engaged in manufacturing beer in New York and New Jersey, which ships its beer from New Jersey, but keeps an agent in New York and Brooklyn, the moneys collected by the agent being deposited in a Brooklyn bank, with a daily average of about \$500, is not doing a business other than manufacturing within the State, although it also keeps a place in the State where goods are temporarily stored. *People ex rel. Brewing Co. v. Roberts*, 22 App. Div. 282 (1897).

A corporation engaged in the production of kindling wood and preparing the same for the

market is a manufacturing corporation exempt from the franchise tax. *People ex rel. Standard Wood Co. v. Roberts*, 20 App. Div. 514 (1897).

The business of owning and leasing to others patents for lighting, heating and furnishing motive power by electricity is not a manufacturing business within the meaning of the statutes. *People ex rel. Edison Electric Lighting Co. v. Campbell*, 88 Hun, 530; s. c., 68 N. Y. St. Rep. 747; 34 N. Y. Supp. 713 (1895).

A corporation which publishes a newspaper, without printing it or having any part in the work of printing except to have a foreman watch the work, is not a manufacturing corporation. *People ex rel. The Jewelers' Publishing Co. v. Roberts*, 155 N. Y. 1 (1898). Query, as to whether a corporation which both publishes and prints a newspaper is a manufacturing corporation. *Id.*

A corporation engaged in buying sheep and lambs, slaughtering them, converting their carcasses into mutton and also converting the other material into marketable products, is not a manufacturing corporation. *People ex rel. New England Dressed Meat & Wool Co. v. Roberts*, 155 N. Y. 408 (1898); rev'g 20 App. Div. 521 (1897).

Charter of a foreign corporation provided that its business in New York was the sale of its manufactured goods, and it appeared that it merely did some incidental work in connection therewith. Held, that it was not entitled to exemption from taxation under L. 1880, ch. 542, as am'd by L. 1881, ch. 361; L. 1885, ch. 359; L. 1889, ch. 353, on the ground that it carried on a manufacturing business in this State. *People ex rel. Roebing's Sons Co. v. Wemple*, 138 N. Y. 582; 34 N. E. Rep. 386; 53 N. Y. St. Rep. 297 (1893).

A corporation organized under L. 1855, ch. 301, extending the operation of L. 1848, ch. 40, for the purpose of collecting, storing and preserving ice, preparing it for market, etc., is not a manufacturing corporation exempt from the taxes imposed by L. 1880, ch. 542, § 3, as am'd by L. 1881, ch. 361. *People v. Knickerbocker Ice Co.*, 99 N. Y. 181 (1885); aff'g 32 Hun, 475 (1884).

A foreign corporation, whose business consists in the purchase of spices and baking powder in bulk and putting up the same in packages for sale, buying various kinds of tea and mixing them to produce a compound called combination tea, grinding coffee, and in some instances mixing various kinds together, is not engaged in manufacture, in this State, so as to be exempt from liability to the franchise tax. *People ex rel. Union Pac. Tea Co. v. Roberts*, 145 N. Y. 375; 40 N. E. Rep. 67; 64 N. Y. St. Rep. 827; aff'g 82 Hun, 352; s. c., 63 N. Y. St. Rep. 573; 31 N. Y. Supp. 243 (1895).

See Am. & Eng. Ency. of Law, XIV, pp. 256-69, under heads "Manufactory," "Manufacture," and "Manufacturing Corporation," for collection of decisions generally on what constitutes "manufacturing."

The rental of an office and the value of office furniture of a manufacturing corporation are not to be deemed taxable, the possession of an office and office furniture being a mere incident to its business. *People ex rel. Standard Wood Co. v. Roberts*, 20 App. Div. 514 (1897).

### Additional franchise tax on transportation and transmission corporations and associations.

§ 184. Every corporation and joint-stock association formed for steam surface railroad, canal, steamboat, ferry, express, navigation, pipe-line, transfer, baggage express, telegraph, telephone, palace car or sleeping car purposes, and all other transportation corporations not liable to taxes under sections one hundred and eighty-five or one hundred and eighty-six of this chapter, shall pay for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this State, an annual excise tax or license fee which shall be equal to five-tenths of one per centum upon its gross earnings within the State, which shall include its gross earnings from its transportation or transmission business originating and terminating within this State, but shall not include earnings derived from business of an interstate character. All settlements for such taxes heretofore based by the comptroller upon gross earnings excluding earnings from interstate business, have been ratified and confirmed, except that the accounts for taxation under section six of chapter three hundred and sixty-one of the laws of eighteen hundred and eighty-one, for the years eighteen hundred and ninety-two and eighteen hundred and ninety-three, shall be settled and adjusted by the comptroller by excluding the earnings of an interstate character as provided by this section.

A State can levy an excise tax upon a railroad corporation for the privilege of exercising its franchise within the State. *Maine v. Grand Trunk R. Co.*, 142 U. S. 217.

A tax upon the receipts of a corporation for transportation only is not an income tax. *Philadelphia & S. Mall Steamship Co. v. Pennsylvania*, 122 U. S. 326.

A railroad corporation created by laws of another State, and doing business between several States, doing such incidental business in this State as was necessary to facilitate its interstate business,—held, that such incidental business related only to interstate commerce, and was not doing such business here as would render it liable to taxation. *People ex rel. Pennsylvania R. Co. v. Wemple*, 29 Abb. N. C. 85; s. c., 47 N. Y. St. Rep. 695 (1892).

A tax imposed upon a railroad corporation whose line terminates outside the State, but merely has terminal facilities within it for the delivery of passengers and freight, the sale of tickets and the collection of dues is void, as the business of the company is interstate commerce exclusively. *People ex rel. Penn. R. Co. v. Wemple*, 138 N. Y. 1; 33 N. E. Rep. 720; 51 N. Y. St. Rep. 702; aff'g 65 Hun, 252; s. c., 20 N. Y. Supp. 287 (1893). It seems that either a domestic or foreign corporation engaged in both domestic and interstate commerce may be taxed under the statute,



provided the interstate business is not discriminated against. *Id.*

A railroad corporation organized under New York laws and operating a railroad between points in this State and another State is liable to pay the tax prescribed on gross earnings, this being a tax on franchise and not an interference with interstate commerce. *People ex rel. Dunkirk, Allegheny Valley & P. R. R. Co. v. Campbell*, 74 Hun, 210; s. c., 56 N. Y. St. Rep. 358; 26 N. Y. Supp. 832 (1894). See *Ratterman v. W. U. Tel. Co.*, 127 U. S. 411.

Taking as a basis of assessment such proportion of the capital stock of a car company as the number of miles over which it ran its cars within the State bore to the whole number of miles in that and other States over which its cars were run, was a just and equitable method of assessment. *Pullman Palace Car Co. v. Pennsylvania*, 141 U. S. 18.

The United States Express Company, an unincorporated joint-stock company or association carrying on business in this State, held subject to tax. *People ex rel. Platt v. Wemple*, 117 N. Y. 136; 22 N. E. Rep. 1046; 27 N. Y. St. Rep. 341 (1889).

Telegraph companies receiving the benefits of State laws for the protection of their property and rights are liable to be taxed upon their real or personal property as any person would be. *Western U. Tel. Co. v. Atty.-Gen.*, 125 U. S. 530; *Leloup v. Mobile*, 127 *Id.* 640.

#### Franchise tax on elevated railroads or surface railroads not operated by steam.

§ 185. Every corporation, joint-stock company or association operating any elevated railroad or surface railroad not operated by steam shall pay to the State for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity within this State, an annual tax which shall be one per centum upon its gross earnings from all sources within this State, and three per centum upon the amount of dividends declared or paid in excess of four per centum upon the actual amount of paid-up capital employed by such corporation, joint-stock company or association. Any corporation, joint-stock company or association taxed under this section which has paid a tax to the State for the year ending November first, eighteen hundred and ninety-five, under section three of chapter five hundred and forty-two of the laws of eighteen hundred and eighty, as amended by chapter five hundred and twenty-two of the laws of eighteen hundred and ninety, shall be credited by the comptroller with one-third of the amount so paid in computing the taxes to be paid for the year ending June thirtieth, eighteen hundred and ninety-six.

Such corporations prior to 1896 paid a capital stock tax based upon dividends in the same

manner as in the case of other taxable business corporations.

#### Franchise tax on water-works companies, gas companies, electric or steam heating, lighting and power companies.

§ 186. Every corporation, joint-stock company or association formed for supplying water or gas, or for electric or steam, heating, lighting or power purposes, shall pay to the State for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this State, an annual tax which shall be five-tenths of one per centum upon its gross earnings from all sources within this State, and three per centum upon the amount of dividends declared or paid in excess of four per centum upon the actual amount of paid-up capital employed by such corporation, joint-stock company or association.

See note to last section.

#### Franchise tax upon insurance corporations.

§ 187. Every insurance or surety corporation doing business in this State, except a fire, marine or casualty insurance corporation of another State, shall annually pay a tax into the treasury of the State for the privilege of exercising its corporate franchises in this State, at the rate of five-tenths of one per centum upon the gross amount of premiums received for business done in this State by such company or association, person or partnership, whether such premiums were in the form of money, notes, credits, or any other substitute for money. Life insurance corporations and purely mutual benefit associations, whose funds for the benefit of members, their families or heirs, are made up entirely of contributions of their members and the accumulated interest thereon, shall be exempt from the tax fixed by this section. The term "insurance corporation," as used in this article, shall include all persons and partnerships doing an insurance business in this State. (Thus amended by L. 1897, ch. 494.)

#### Tax upon foreign bankers.

§ 188. Every foreign banker doing business in this State, shall annually pay to the treasurer a tax of one-half of one per centum on his business done in this State, to be ascertained as follows: By first computing the daily average, for each month, of the moneys outstanding upon loans, and of all other moneys received, used or employed in connection with its or their business done in this State by such banker, and by then dividing the aggregate of such monthly averages by the number of months for which such banker shall, during the year preceding, have been engaged in the business of banking in this State.

The term, doing a banking business, as used in this section, means doing any such business as a corporation may be created to do under article two of the banking law, or doing any business which a corporation is authorized by such article to do. The term, foreign banker doing a banking business in this State, as used in this section, includes:

1. Every foreign corporation doing a banking business in this State, except a national bank.

2. Every unincorporated company, partnership or association, of two or more individuals, organized under or pursuant to the laws of another State or country, doing a banking business in this State.

3. Every other unincorporated company, partnership or association, of two or more individuals, doing a banking business in this State, if the members thereof, owning more than a majority interest therein, or entitled to more than one-half of the profits thereof, or who would, if it were dissolved, be entitled to more than one-half of the net assets thereof, are not residents of this State.

4. Every non-resident of this State, doing a banking business in this State, in his own name and right only.

#### Reports of corporations.

§ 189. Corporations liable to pay a tax under this article shall report as follows:

##### Corporations paying franchise tax.

1. Every corporation, association or joint-stock company liable to pay a tax under section one hundred and eighty-two of this chapter shall, on or before November fifteenth in each year, make a written report to the comptroller of its condition at the close of its business on October thirty-first preceding, stating the amount of its authorized capital stock, the amount of stock paid in, the date and rate per centum of each dividend declared by it during the year ending with such day, the entire amount of the capital of such corporation, and the capital employed by it in this State during such year.

##### Transportation and transmission corporations.

2. Every transportation or transmission corporation, joint-stock company or association liable to pay an additional tax under section one hundred and eighty-four of this chapter, shall also, on or before August first in each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the amount of its gross earnings from all sources and the amount of its gross earnings from its transportation or transmission business originating and terminating within this State.

##### Elevated and surface railroad corporations.

3. Every corporation, joint-stock company or association liable to pay a tax under section one hundred and eighty-five of this chapter, shall, on or before August first of each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the amount of its gross earnings from business done in this State, the amount of dividends of every nature declared or paid during the year ending June thirtieth, the authorized capital of the company and the amount of capital stock actually issued and outstanding.

##### Water-works, gas, electric, steam heating, lighting and power corporations.

4. Every corporation, joint-stock company or association liable to pay a tax under section one hundred and eighty-six of this chapter, shall, on or before December first of each year, make a written report to the comptroller of its condition at the close of its business on October thirty-first preceding, stating the amount of its gross earnings from business done in this State, the amount of dividends of every nature declared or paid during the year ending with October thirty-first, the authorized capital of the company and the amount of capital stock actually issued and outstanding.

##### Insurance corporations.

5. Every insurance corporation liable to pay a tax under section one hundred and eighty-seven of this chapter, shall, on or before August first in each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the entire amount of premiums received on business done thereby in this State during the year ending with such day, whether the premiums were in money or in the form of notes, credits or other substitutes for money.

##### Foreign bankers.

6. Every foreign banker liable to pay a tax under section one hundred and eighty-eight of this chapter shall, on or before February first in each year, make a written report to the comptroller of the condition of his business on December thirty-first preceding, stating the amount of tax for which he is liable under this article, and giving in detail the facts required by the last preceding section for the purpose of ascertaining and computing the same.

Under the former act it was held that a corporation although not organized for a full year was required to report since the tax imposed was to meet the expenditures of the prospective fiscal year. *People v. Spring Valley Hydraulic Gold Co.*, 92 N. Y. 383 (1883).

**Value of stock to be appraised.**

§ 190. In case no dividend has been declared, by a corporation, association or joint-stock company liable to pay a tax under section one hundred and eighty-two of this chapter, the treasurer or secretary of the company, shall, under oath, between the first and fifteenth day of November in each year, estimate and appraise the capital stock of such company upon which no dividend has been declared, or upon which the dividend amounted to less than six per centum at its actual value in cash, not less, however, than the average price which said stock sold for during said year, and shall forward the same to the comptroller with the report provided for in the last section. If the comptroller is not satisfied with the valuation so made and returned he is authorized and empowered to make a valuation thereof, and settle an account upon the valuation so made by him, and the taxes, penalties and interest to be paid the State.

See section 196 for review of determination of comptroller by certiorari.

The comptroller's determination is conclusive, unless on application for revision it is clearly shown to be erroneous. *People ex rel. Axe & Tool Co. v. Roberts*, 82 Hun, 313; s. c., 63 N. Y. St. Rep. 574; 31 N. Y. Supp. 245 (1894); *People ex rel. Chicago, etc., R. R. Co. v. Roberts*, 90 Hun, 474 (1895); *People ex rel. Staten Island Rapid Transit Co. v. Roberts*, 4 App. Div. 334 (1896).

The comptroller is in effect an assessor and he may determine the matter submitted to him from evidence which would not be admissible in an action at law. *People v. Campbell*, 88 Hun, 544; s. c., 68 N. Y. St. Rep. 811; 34 N. Y. Supp. 801 (1895).

The decision of the comptroller, fixing an assessment against a corporation, will not be disturbed on appeal where the corporation is subject to taxation, unless clearly shown to be erroneous. *People ex rel. Am. Contracting & Dredging Co. v. Wemple*, 129 N. Y. 558; 29 N. E. Rep. 812; 42 N. Y. St. Rep. 400 (1892); *People ex rel. Gramercy Co. v. Roberts*, 91 Hun, 148 (1895); *People ex rel. U. V. Copper Co. v. Roberts*, 156 N. Y. 585 (1898).

The corporation being taxable to some extent, the determination of the comptroller upon the question of valuation, unless clearly shown to be erroneous, is conclusive. *People ex rel. Edison Electric Light Co. v. Campbell*, 88 Hun, 530; s. c., 68 N. Y. St. Rep. 747; 34 N. Y. Supp. 713 (1895); *People ex rel. Stokes Co. v. Roberts*, 90 Hun, 533 (1895); *People ex rel. Axe & Tool Co. v. Roberts*, 82 Hun, 313; 63 N. Y. St. Rep. 574 (1893).

Where a person or corporation aggrieved seeks to review the action of the comptroller in imposing a tax, the burden is upon the relator to show some error or mistake upon the part of the comptroller. *People ex. rel Brooklyn El. R. Co. v. Roberts*, 90 Hun, 537 (1895).

The real estate of a corporation may be taken into consideration by the comptroller, though it is subject to local taxation. *People ex rel. v. Campbell*, 53 N. Y. St. Rep. 793 (1893). But he is not bound by the value placed on it by the local assessors. *People ex rel. Roebbling's Sons Co. v. Wemple*, 138 N. Y. 582; 34 N. E. Rep. 386; 53 N. Y. St. Rep. 297 (1893).

The consideration of the amount of relator's average monthly bank balances, the gross amount paid for salaries, wages, and rent, sustained. *People ex rel. v. Campbell*, 53 N. Y. St. Rep. 792 (1893).

The rule of assessment is the true value of its corporate assets, less the debts and obligations, and not the market value of the shares; and, taking the actual value of its property used here by a foreign corporation, is not erroneous. *People ex rel. Roebbling's Sons Co. v. Wemple*, 138 N. Y. 582; 34 N. E. Rep. 386; 53 N. Y. St. Rep. 297 (1893).

Where the comptroller in estimating and appraising the capital stock of a railroad company fixes the valuation at the average price at which the stock sold during the year, he has complied with the statute, and it is not necessary for him to ascertain the "intrinsic" or actual value of the stock in cash, unless such intrinsic value exceeded the market value. *People ex rel. El. R. R. of Brooklyn v. Roberts*, 90 Hun, 537.

The actual value of the capital stock of a corporation is the value of its assets and the goodwill of its business, including its right to conduct it under its franchise, less its liabilities. *People ex rel. Wiebusch & Hilger Co. v. Roberts*, 154 N. Y. 101; 47 N. E. Rep. 980 (1897).

**Further requirements as to report of corporations.**

§ 191. Every report required by this article shall have annexed thereto, the affidavit of the president, vice-president, secretary or treasurer of the corporation, association or joint-stock company or of the person or one of the persons, or the members of the partnership making the same, to the effect that the statements contained therein are true. Such reports shall contain any other data, information or matter which the comptroller may require to be included therein, and he may prescribe the form in which such reports shall be made and the form of oath thereto. When so prescribed such form shall be used in making the report. The comptroller may require at any time a further or supplemental report under this article, which shall contain information and data upon such matters as the comptroller may specify.

**Powers of comptroller to examine into affairs of corporation**

§ 192. In case any report required by any of the preceding sections of this article shall be unsatisfactory to the comptroller, or if any such report is not made as herein required, the comptroller is authorized to



make an estimate of the dividends paid by such corporation and the value of the capital stock employed by it, from any such report or from any other data, and to order and state an account according to the estimate and value so made by him for the taxes, percentage and interest due the State from such corporation, association, joint-stock company, person or partnership. The comptroller shall also have power to examine or cause to be examined in case of a failure to report or in case the report is unsatisfactory to him, the books and records of any such corporation, joint-stock association, company, foreign banker, person or partnership, and may hear testimony and take proofs material for his information, either personally or he may appoint a commissioner by a written appointment under his hand and official seal for that purpose. Every commissioner so appointed shall be authorized to make such examination and take such testimony and hear such proofs and report the proofs and testimony so taken and the result of his examination so made and the facts found by him to the comptroller. The comptroller shall, therefrom, or from any other data which shall be satisfactory to him, order and state an account for the tax due the State, together with the expenses of such examination and the taking of such testimony and proofs. Such expenses shall be fixed and adjusted by the comptroller.

See § 190.

#### Notice of statement of tax; interest.

§ 193. Upon auditing and stating every account for taxes or other charges under this article, the comptroller shall forthwith send notice thereof in writing to the person, partnership, company, association or corporation against whom the same is made, which notice may be mailed to the post-office address of such person, partnership, association, company or corporation. All accounts so audited and stated shall bear interest upon the total amount found due thereon to the State, for taxes, percentage, interest and other charges, from the expiration of thirty days after sending such notice until payment thereof shall be made.

#### Payment of tax and penalty for failure.

§ 194. A tax imposed by sections one hundred and eighty-two or one hundred and eighty-six of this chapter, shall be due and payable into the State treasury on or before the fifteenth day of January in each year. A tax imposed by section one hundred and eighty-four of this chapter on a transportation or transmission corporation, or by section one hundred and eighty-five, on elevated railroads or surface railroads not operated by steam, or by section one hundred and eighty-seven of this chapter on an

insurance corporation, shall be due and payable into the State treasury on or before the first day of August in each year. A tax imposed by section one hundred and eighty-eight of this chapter on a foreign banker shall be due and payable into the State treasury on or before February first in each year. If such tax in any case is not paid within thirty days after the same becomes due, or if the report of any such corporation is not made within the time required by this article, the corporation, association, joint-stock company, person or partnership, liable to pay the tax, shall pay into the State treasury in addition to the amount of such tax, a sum equal to five per centum thereof, and one per centum additional for each month the tax remains unpaid, which sum shall be added to the tax and paid or collected therewith. Every corporation, association, joint-stock company, person or partnership failing to make the annual report required by this article, or failing to make any special report required by the comptroller, within any reasonable time to be specified by him, shall forfeit to the people of the State the sum of one hundred dollars for every such failure, and the additional sum of ten dollars for each day that such failure continues. Such tax shall be a lien upon and bind all the real and personal property of the corporation, joint-stock company or association liable to pay the same from the time when it is payable until the same is paid in full.

#### Revision and readjustment of accounts by comptroller.

§ 195. The comptroller may, at any time within one year from the time any such account shall have been audited and stated, and notice thereof sent to the person, partnership, company, association or corporation against whom it is stated, revise and readjust such account upon application therefor by the party against whom the account is stated or by the attorney-general, and if it shall be made to appear upon any such application by evidence submitted to him or otherwise, that any such account included taxes or other charges which could not have been lawfully demanded, or that payment has been legally made or exacted of any such account, he shall resettle the same according to law and the facts, and charge or credit, as the case may require, the difference, if any, resulting from such revision or resettlement upon the accounts for taxes of or against any such person, partnership, company, association or corporation. The comptroller shall forthwith send written notice of its determination upon such application to the applicant, which notice may be sent by mail to his post-office address.

See notes to § 190.

Heretofore no limitation of time was prescribed for revision. *People ex rel. Edison, etc., Co. v. Wemple*, 133 N. Y. 617; 30 N. E. Rep. 1002 (1892).

A manufacturing corporation is entitled to revision and a resettlement of a tax which it has paid when in fact it was not subject to taxation, and the fact that such payments were not made under coercion will not deprive the corporation of its remedy, nor is the report made by the corporation to the comptroller for the purpose of enabling him to make a valuation of the stock a "stipulation" which will prevent a recovery back of the tax. *People ex rel. Edison Electric & Illuminating Co. v. Wemple*, 141 N. Y. 471; s. c., 57 N. Y. St. Rep. 609 (1894).

A party seeking revision or readjustment of a tax against a corporation settled by the comptroller must produce evidence showing the error of the settlement. *People ex rel. Postal Telegraph Co. v. Campbell*, 70 Hun, 507; s. c., 52 N. Y. St. Rep. 790; 24 N. Y. Supp. 208 (1893).

Where a corporation applies for a rehearing by the comptroller because of an alleged overvaluation of its capital stock, it should submit an inventory of all the real estate and personal property owned by it within the State, and offer satisfactory proof that it owns no other property here except as set out in the inventory. *People ex rel. Axe & Tool Co. v. Roberts*, 82 Hun, 313; s. c., 63 N. Y. St. Rep. 574; 31 N. Y. Supp. 245 (1894).

The decision rendered by the comptroller on the application to revise and readjust a tax has the effect of a judgment rendered by a court. *People ex rel. Am. Sur. Co. v. Campbell*, 64 Hun, 417; s. c., 46 N. Y. St. Rep. 228; 19 N. Y. Supp. 652 (1892).

After such a hearing and a decision on the merits the judgment rendered by the comptroller should not be again opened. *Id.*

Taxes once paid into the treasury cannot be refunded without an appropriation. *People ex rel. Edison Electric Illuminating Co. v. Wemple*, 133 N. Y. 617; 30 N. E. Rep. 1002 (1892).

The comptroller may resettle the account and credit or charge the difference, if any, on the current account. *Id.*

#### Review of determination of comptroller by certiorari.

§ 196. The determination of the comptroller upon any application made to him by any person, partnership, company, association or corporation for a revision and resettlement of any account, as prescribed in this article, may be reviewed both upon the law and the facts, upon certiorari by the supreme court at the instance of any person, partnership, company, association or corporation affected thereby, and in the name and on behalf of the people of the State. For the purpose of such review the comptroller shall return, on such certiorari, the accounts and all the evidence before him on such application, and all the papers and proofs upon the original statement of such account and all proceedings thereon. If the original or resettled accounts shall

be found erroneous or illegal, either in point of law or of fact, by the supreme court, upon any such review, the accounts reviewed shall then be corrected and restated, and from any determination of the supreme court upon any such review, an appeal to the court of appeals may be taken by either party.

Upon certiorari to review the action of the comptroller in taxing a corporation, the return is conclusive in the Court of Appeals. *People ex rel. Roebbing's Sons Co. v. Wemple*, 138 N. Y. 582; 34 N. E. Rep. 386; 53 N. Y. St. Rep. 297 (1893). The comptroller's determination as to the amount of the tax should not be disturbed unless it clearly appears to be erroneous. *Id.*

Relator filed reports and paid the tax assessed to the comptroller. Afterward it was determined that the relator was a manufacturing corporation and exempt from the tax and it was sought to recover back the tax so paid. Held, that the payment was, in law, a voluntary one, and certiorari to review the action of the comptroller in refusing to pay back the tax could not be maintained. *People ex rel. Edison Electric Illuminating Co. v. Wemple*, 69 Hun, 367; s. c., 52 N. Y. St. Rep. 786; 23 N. Y. Supp. 661 (1893).

#### Regulations as to such writ of certiorari.

§ 197. No certiorari to review any audit and statement of an account or any determination by the comptroller under this article, shall be granted unless notice of application therefor is made within thirty days after the service of the notice of such determination. Eight days' notice shall be given to the comptroller of the application for such writ. The full amount of the taxes, percentage, interest and other charges, audited and stated in such account, must be deposited with the State treasurer before making the application and an undertaking filed with the comptroller in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that if such writ is dismissed or the determination of the comptroller affirmed, the applicant for the writ will pay all costs and charges which may accrue against him, or it in the prosecution of the writ, including costs of all appeals.

#### Warrant for the collection of taxes.

§ 198. After the expiration of thirty days from the sending by the comptroller of a notice of a settlement of an account as provided in this article, unless the amount of such account shall have been paid or deposited with the State treasurer, if an appeal or other proceedings have been taken to review the same, and the undertaking given as provided in this article, the comptroller may issue a warrant under his hand and official seal, directed to the sheriff of any county of the State, commanding him to levy upon and sell the real and personal property of the person, partnership, company, association or corporation against



which such account is stated, found within his county for the payment of the amount thereof with interest thereon and costs of executing the warrant, and to return such warrant to the comptroller and pay to the State treasurer the money collected by virtue thereof, by a time to be therein specified, not less than sixty days from the date of the warrant. Such warrant shall be a lien upon and shall bind the real and personal property of the person, partnership, company, association or corporation against which it is issued, from the time an actual levy shall be made by virtue thereof. The sheriff to whom any such warrant shall be directed shall proceed upon the same in all respects, with like effect, and in the same manner as prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

#### Information of delinquents.

§ 199. It shall be the duty of any person having knowledge of the evasion of taxation under this article by any corporation, association, joint-stock company, partnership or person liable to taxation thereunder, for any omission on their part to make the reports required by this article, to make a written report thereof to the comptroller of the State, with such information as may be in his possession as may lead to the recovery of any taxes due the State therefrom. If, in his opinion, the interests of the State require it, the comptroller may employ such person to assist in the collection and preparation of evidence and in the prosecution and trial of actions for such taxes, and so much of the same, not exceeding ten per centum thereof, as may be collected from any such delinquent corporation, association, company, partnership or person, by reason of such report and such services, as shall have been agreed upon between such person and the comptroller or attorney-general as a compensation therefor, shall be paid to such person, and nothing shall be paid to such person for such report or services unless there shall be a recovery of taxes by reason thereof.

#### Action for recovery of taxes; forfeiture of charter of delinquent corporation.

§ 200. An action may be brought by the attorney-general, at the instance of the comptroller, in the name of the State, to recover the amount of any account audited and stated by the comptroller under the provisions of this article. If any such account shall remain unpaid at the expiration of one year after notice of the statement thereof has been sent as required by this article, and the comptroller is satisfied that the failure to pay the same is intentional, he shall so report to the attorney-general, who shall immediately bring an action, in

the name of the people of the State, for the forfeiture of the franchise of any corporation, joint-stock company or association failing to make such payment, and if it is found that such failure was intentional, judgment shall be rendered in such action for the forfeiture of its franchise and for its dissolution, and thereafter such franchise shall be annulled.

#### Reports to be made by the secretary of State.

§ 201. The secretary of State shall transmit on the first day of each month to the comptroller, a report of the stock corporations whose certificates of incorporation are filed, or of the foreign stock corporations to whom a certificate of authority has been issued to do business in this State, during the preceding month. Such report shall state the name of the corporation, its place of business, the amount of its capital stock, its purposes or objects, the names and places of residence of its directors, and, if a foreign corporation, its place of business within the State. The comptroller may prescribe the forms and furnish the blanks for such reports. The secretary of State shall make like reports to the comptroller whenever required by him relating to any such corporations whose certificates have been filed or to whom a certificate of authority has been issued prior to the time when this article takes effect, and during any period of time specified by the comptroller in his request for such report.

#### Exemptions from other State taxation.

§ 202. The personal property of every corporation, company, association or partnership taxable under this article, other than for an organization tax, shall be exempt from assessment and taxation upon its personal property for State purposes, if all taxes due and payable under this article have been paid thereby. The personal property of a private or individual banker, actually employed in his business as such banker, shall be exempt from taxation for State purposes, if such private or individual banker shall have paid all taxes due and payable under this article. Such corporation and private or individual banker shall in no other respect be relieved from assessment and taxation by reason of the provisions of this article.

The exemption of an insurance company on its personal property includes shares in New York banks owned by it. *Aetna Ins. Co. v. Mayor, etc.*, of New York, 153 N. Y. 331; 47 N. E. Rep. 593 (1897).

#### Application of taxes.

§ 203. The taxes imposed by this article and the revenues thereof shall be applicable to the general fund of the treasury and to the payment of all claims and demands which are a lawful charge thereon.



## PART XII.

## THE STATUTORY CONSTRUCTION LAW.

(L. 1892, ch. 677.)

An act relating to the construction of statutes, constituting chapter one of the General Laws.

[Became a law May 18, 1892, taking effect immediately.]

## CHAPTER I OF THE GENERAL LAWS.

## The Statutory Construction Law.

- Sec. 1. Short title; extent of application.  
 2. Property.  
 3. Real property.  
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 5. Person.  
 6. Judge.  
 7. Lunacy; idiocy.  
 8. Gender; number; tense.  
 9. Heretofore; hereafter; now.  
 10. Last; preceding; next; following.  
 11. Folio.  
 12. Writing; signature.  
 13. Seal.  
 14. Oath; affidavit; swear.  
 15. Acknowledge; acknowledgment.  
 16. Bond; undertaking.  
 17. Choose; elect; appoint.  
 18. Board composed of one person.  
 19. Meeting; quorum; powers of majority.  
 20. Service of notice upon board or body.  
 21. County clerk; register.  
 22. Village.  
 23. State; territory.  
 24. Public holiday; half-holiday.  
 25. Year.  
 26. Month.  
 27. Day; mode of computing days; night-time.  
 28. Standard time.  
 29. Civil and criminal codes.  
 30. Laws of England and of the colony of New York.  
 31. Limiting the effect of repealing statutes.  
 32. Effect of repeal and re-enactment.  
 33. Effect of revision upon laws passed at same session or before revision takes effect.  
 34. Alterations of titles and headnotes.  
 35. Laws repealed.  
 36. Time of taking effect.

Thus am'd by L. 1894, ch. 448. See § 34 hereof.

## Short title; extent of application.

Section 1. This chapter shall be known as the Statutory Construction Law, and is

applicable to every statute unless its general object, or the context of the language construed, or other provisions of law indicate that a different meaning or application was intended from that required to be given by this chapter.

See note to § 31 hereof, and note in 29 Abb. N. C. 146.

## Property.

§ 2. The term property includes real and personal property.

## Real property.

§ 3. The term real property includes real estate, lands, tenements and hereditaments, corporeal and incorporeal.

## Personal property.

§ 4. The term personal property includes chattels, money, things in action, and all written instruments themselves, as distinguished from the rights or interests to which they relate, by which any right, interest, lien or incumbrance in, to or upon property, or any debt or financial obligation is created, acknowledged, evidenced, transferred, discharged or defeated, wholly or in part, and everything, except real property, which may be the subject of ownership. The term chattels includes goods and chattels.

## Person.

§ 5. The term person includes a corporation and a joint-stock association. When used to designate a party whose property may be the subject of any offense, the term person also includes the State, or any other State, government or country which may lawfully own property in the State.

## Judge.

§ 6. The term judge includes every judicial officer authorized, alone or with others, to hold or preside over a court of record.

## Lunacy; idiocy.

§ 7. The terms lunatic and lunacy include every kind of unsoundness of mind except idiocy.

For definition of insanity as a defense to crime, see Penal Code, §§ 20-22.

**Gender; number; tense.**

§ 8. Words of the masculine gender include the feminine and the neuter, and may refer to a corporation, or to a board or other body or assemblage of persons; and, when the sense so indicates, words of the neuter gender may refer to any gender. The term men includes boys and the term women includes girls.

Words in the singular number include the plural, and in the plural number include the singular.

Words in the present tense include the future.

**Heretofore; hereafter; now.**

§ 9. Each of the terms, heretofore, and hereafter, in any provision of a statute, relates to the time such provision takes effect. The term now in any provision of a statute referring to other laws in force, or to persons in office, or to any facts or circumstances as existing, relates to the laws in force, or the person in office, or to the facts or circumstances existing, respectively, immediately before the taking effect of such provision.

**Last; preceding; next; following.**

§ 10. A reference to the last or preceding section, or other provision of a statute, means the section or other division immediately preceding, and a reference to the next or following section or other division of a statute means the section or other division immediately following.

**Folio.**

§ 11. A folio is one hundred words, counting as a word each figure necessarily used.

**Writing; signature.**

§ 12. The terms writing and written include every legible representation of letters upon a material substance, except when applied to the signature of an instrument. The term signature includes any memorandum, mark or sign, written or placed upon any instrument or writing with intent to execute or authenticate such instrument or writing.

**Seal.**

§ 13. The private seal of a person, other than a corporation, to any instrument or writing, shall consist of a wafer, wax or other similar adhesive substance affixed thereto or of paper or other similar substance affixed thereto by mucilage, or other adhesive substance or the word "seal," or the letters "L. S.," opposite the signature.

A seal of a court, public officer or corporation may be impressed directly upon the instrument or writing to be sealed, or upon wafer, wax or other adhesive substance af-

fixed thereto, or upon paper or other similar substance affixed thereto by mucilage or other adhesive substance. An instrument or writing duly executed, in the corporate name of a corporation, which shall not have adopted a corporate seal, by the proper officers of the corporation under their private seals, shall be deemed to have been executed under the corporate seal.

As to what constituted a seal at common law, and when equity before this statute would treat "L. S.," etc., as a seal, see *Barnard v. Gantz*, 140 N. Y. 249; *Town of Solon v. Williamsburgh Bank*, 114 id. 122.

**Oath; affidavit; swear.**

§ 14. The terms oath and affidavit include every mode authorized by law of attesting the truth of that which is stated.

The term swear includes every mode authorized by law for administering an oath. When an affidavit is authorized or required it may be sworn to before any officer authorized by law to take the acknowledgment of deeds in this State, unless a particular officer is specified before whom it is to be taken.

For definitions of these terms for the purposes of perjury, see Penal Code, § 97. Any verified pleading or other paper is an affidavit within the meaning of the Civil Code, see § 3243, subd. 11. As to the mode of administering oaths, etc., see Civil Code, §§ 842-851. As to what officers may take acknowledgments of deeds in this State, see note to next section.

**Acknowledge; acknowledgment.**

§ 15. When the execution of any instrument or writing is authorized or required by law to be acknowledged, or to be proven so as to entitle it to be filed or recorded in a public office, the acknowledgment may be taken or the proof made before any officer then and there authorized to take the acknowledgment or proof of the execution of a deed of real property to entitle it to be recorded in a county clerk's office, and shall be made and certified in the same manner as such acknowledgment or proof of such deed.

The term acknowledge and acknowledgment, when used with reference to the execution of an instrument or writing other than a deed of real property, includes a compliance with the provisions of this section by either such proof or acknowledgment.

The following officers may take acknowledgments within the State:

Notaries Public. Executive Law (L. 1892, ch. 683), § 85, as am'd by L. 1894, ch. 88.

Commissioners of deeds. Executive Law (L. 1892, ch. 683), § 88, as am'd by L. 1894, ch. 88.

Justices of the peace. L. 1840, ch. 238, § 1.

## Statutory Construction Law — §§ 16-25.

Mayors, recorders and judges of courts of record.  
R. S., part II, ch. 3, § 4, subd. 1.  
Surrogates. L. 1884, ch. 300.

**Bond; undertaking.**

§ 16. A provision of law authorizing or requiring a bond to be given shall be deemed to have been complied with by the execution of an undertaking to the same effect.

**Choose; elect; appoint.**

§ 17. The term choose includes elect and appoint.

**Board composed of one person.**

§ 18. A reference to several officers of a municipal corporation holding the same office, or to a board of such officers, shall be deemed to refer to the single officer holding such office, when but one person is chosen to fill such office in pursuance of law.

**Meeting; quorum; powers of majority.**

§ 19. Whenever three or more public officers are given any power or authority, or three or more persons are charged with any public duty to be performed or exercised by them jointly or as a board or similar body, a majority of all such persons or officers at a meeting duly held at a time fixed by law, or by any by-law duly adopted by such board or body, or at any duly adjourned meeting of such meeting, or at any meeting duly held upon reasonable notice to all of them, may perform and exercise such power, authority or duty, and if one or more of such persons or officers shall have died or have become mentally incapable of acting, or shall refuse or neglect to attend any such meeting, a majority or\* the whole number of such persons or officers shall be a quorum of such board or body, and a majority of a quorum, if not less than a majority of the whole number of such persons or officers may perform and exercise any such power, authority or duty. Any such meeting may be adjourned by a less number than a quorum. A recital in any order, resolution or other record of any proceeding of such a meeting that such meeting had been so held or adjourned, or that it had been held upon such notice to the members, shall be presumptive evidence thereof.

**Service of notice upon body or board.**

§ 20. When a notice is required to be given to a board or body, service of such notice upon the clerk or chairman thereof shall be sufficient.

**County clerk; register.**

§ 21. Any act done in pursuance of law by the register of a county shall be deemed

to be a compliance with any provision of law authorizing or requiring such act to be done by the county clerk of such county, and any instrument or writing filed, entered or recorded in pursuance of law in the office of a register of a county, shall be deemed to be a compliance with any provision of law authorizing or requiring such paper to be filed, entered or recorded, as the case may be, in the office of the clerk of such county.

**Village.**

§ 22. The term village means an incorporated village.

**State; territory.**

§ 23. The term State, when used generally to include every State of the United States, includes also every territory of the United States and the District of Columbia. The term territory when used generally to include every territory of the United States, includes also the District of Columbia.

**Public holiday; half-holiday.**

§ 24. The term holiday includes the following days in each year: the first day of January, known as New Year's day; the twelfth day of February, known as Lincoln's birthday; the twenty-second day of February, known as Washington's birthday; the thirtieth day of May, known as Memorial day; the fourth day of July, known as Independence day; the first Monday of September, known as Labor day, and the twenty-fifth day of December, known as Christmas day, and if either of such days is Sunday, the next day thereafter; each general election day and each day appointed by the president of the United States or by the governor of this State as a day of general thanksgiving, general fasting and prayer, or other general religious observances. The term, half-holiday, includes the period from noon to midnight of each Saturday which is not a holiday. The days and half days aforesaid shall be considered as the first day of the week, commonly called Sunday, and as public holidays or half-holidays, for all purposes whatsoever as regards the transaction of business in the public offices of this State, or counties of this State. On all other days and half days, excepting Sundays, such offices shall be kept open for the transaction of business. (Thus amended by L. 1897, ch. 614, taking effect October 1, 1897.)

**Year.**

§ 25. Time shall continue to be computed in this State according to the Gregorian or new style. The first day of each year after the year 1752 is the first day of January, according to such style. For the purpose of computing and reckoning the days of the

\* So in the original.



year in the same regular course in the future, every year, the number of which in the Christian era is a multiple of four, is a bisextile or leap year consisting of three hundred and sixty-six days unless such number of the year is a multiple of one hundred and the first two figures thereof treated as a separate number is not a multiple of four, and every year which is not a leap year is a common year consisting of three hundred and sixty-five days.

The term year in a statute, contract, or any public or private instrument, means three hundred and sixty-five days, but the added day of a leap year and the day immediately preceding shall for the purpose of such computation be counted as one day.

In a statute, contract or public or private instrument, the term year means twelve months, the term half-year, six months, and the term a quarter of a year, three months.

Year held to consist of 365 days as to a transaction when the R. S. to that effect was in force. *Hall v. Brennan*, 140 N. Y. 409.

#### Month.

§ 26. In a statute, contract or public or private instrument, unless otherwise provided in such contract or instrument or by law, the term month means a calendar month and not a lunar month. A number of months after or before a certain day shall be computed by counting such number of calendar months from such day, exclusive of the calendar month in which such day occurs, and shall include the day of the month in the last month so counted having the same numerical order in days of the month as the day from which the computation is made, unless there be not so many days in the last month so counted, in which case the period computed shall expire with the last day of the month so counted.

#### Day; mode of computing days; night-time.

§ 27. A calendar day includes the time from midnight to midnight. Sunday or any day of the week specifically mentioned means a calendar day. A number of days specified as a period from a certain day within which or after or before which an act is authorized or required to be done means such number of calendar days exclusive of the calendar day from which the reckoning is made. Sunday or a public holiday, other than a half-holiday, must be excluded from the reckoning if it is the last day of any such period, or if it is an intervening day of any such period of two days. In computing any specified number of days, weeks or months from a specified event, the day upon which the event happens is deemed the day from which the reckoning is made. The day from which any specified number of days, weeks or months of time is reckoned shall be excluded in making the reckoning.

Night-time includes the time from sunset to sunrise. (Thus amended by L. 1894, ch. 447, taking effect May 3, 1894.)

#### Standard time.

§ 28. The standard time throughout this State is that of the seventy-fifth meridian of longitude west from Greenwich, and all courts and public officers, and legal and official proceedings, shall be regulated thereby. Any act required by or in pursuance of law to be performed at or within a prescribed time, shall be performed according to such standard time.

#### Civil and criminal codes.

§ 29. The term Civil Code means the Code of Civil Procedure. The term Criminal Code means the Code of Criminal Procedure.

#### Laws of England and of the colony of New York.

§ 30. A statute of England or Great Britain shall not be deemed to have had any force or effect in this State since May first, seventeen hundred and eighty-eight. Acts of the legislature of the colony of New York shall not be deemed to have had any force or effect in this State since December twenty-ninth, eighteen hundred and twenty-eight.

The resolutions of the Congress of such colony and of the convention of the State of New York, shall not be deemed to be the laws of this State hereafter.

#### Limiting the effect of repealing statutes.

§ 31. The repeal hereafter or by this chapter of any provision of a statute, which repeals any provision of a prior statute, does not revive such prior provision. The repeal hereafter or by this chapter of any provision of a statute, which amends a provision of a prior statute, leaves such prior provision in force unless the amendatory statute be a substantial re-enactment of the statute amended. The repeal of a statute or part thereof shall not affect or impair any act done or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time such repeal takes effect, but the same may be asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such repeal had not been effected; and all actions and proceedings, civil or criminal, commenced under or by virtue of any provision of a statute so repealed, and pending immediately prior to the taking effect of such repeal, may be prosecuted and defended to final effect in the same manner as they might if such provisions were not so repealed.

#### Effect of repeal and re-enactment.

§ 32. The provisions of a law repealing a prior law, which are substantial re-enactments of provisions of the prior law, shall

## Statutory Construction Law — §§ 33-36.

be construed as a continuation of such provisions of such prior law, and not as new enactments. If any provision of a law be repealed and, in substance, re-enacted, a reference in any law to such repealed provision shall be deemed a reference to such re-enacted provision. (Thus amended by L. 1894, ch. 448, taking effect May 3, 1894.)

As to the continuous character of revision with repeal and re-enactment, see *Matter of Prime*, 136 N. Y. 347; *People ex rel. Ulrich v. Bell*, 24 N. Y. St. Rep. 114.

#### Effect of revision upon laws passed at same session or before revision takes effect.

§ 33. No provision of any chapter of the revision of the general laws, of which this chapter is a part, shall supersede or repeal by implication any law passed at the same session of the legislature at which any such chapter was enacted, or passed after the enactment of any such chapter and before it shall have taken effect; and an amendatory law passed at such session or at any subsequent session begun before any such chapter takes effect, shall not be deemed repealed, unless specifically designated in the repealing schedule of such chapter.

#### Alterations of titles and headnotes.

§ 34. If the title of any article or other division of a statute, or the headnote of a section shall be amended or repealed in the body of the statute, or if a new article or other division having a title, or a new section having a new headnote be added to a statute, the corresponding title or headnote, if any, in an abstract of contents at the beginning of the article or other division of the

statute shall be deemed to be correspondingly amended or repealed, although there be no express reference thereto.

#### Laws repealed.

§ 35. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

#### Time of taking effect.

§ 36. This act shall take effect immediately.

#### Sections repealed.

R. S., pt. I, ch. 8, tit. 8 .....	16.
R. S., pt. I, ch. 19, tit. I .....	1, 2, 3, 4, 5.
R. S., pt. II, ch. 4, tit. 2 .....	3.
R. S., pt. II, ch. 4, tit. 3 .....	9.
R. S., pt. III, ch. 8, tit. 17 .....	27.
R. S., pt. III, ch. 10, tit. 4 .....	4.
R. S., pt. IV, ch. 2, tit. 8 .....	16.
L. 1828, 2d meet'g, 51st sess., ch. 20 ..	9, 10, 11.
L. 1828, 2d meet'g, 51st sess., ch. 21 ..	3 and 4.
L. 1857, ch. 536 .....	3.
L. 1874, ch. 321 .....	All.
L. 1877, ch. 466 .....	27.
L. 1884, ch. 14 .....	All.
L. 1886, ch. 21 .....	20.
Code of Civil Procedure .....	29, 788, 960 and subds. 6, 7, 8, 13, 17, 21, 22, 23 & 24 of § 3343.
Code of Criminal Procedure .....	955, 956, 957.
Penal Code .....	261, 500 and subds. 9, 10, 11, 12, 13, 14 & 15 of § 718.





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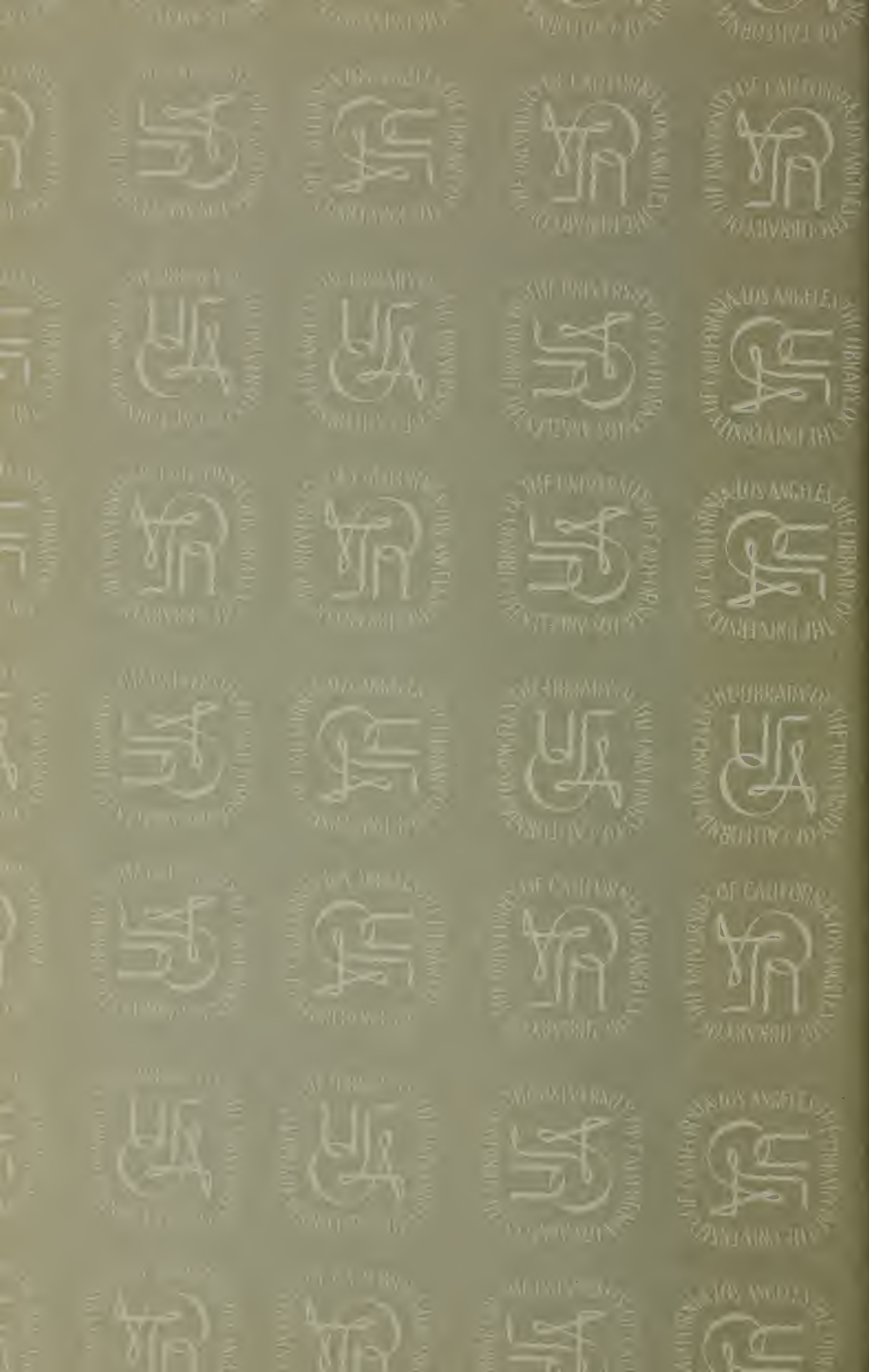






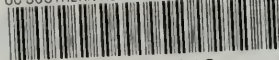








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